SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 275

EDITH NYCUM, Petitioner

vs.

CITY OF ALTOONA,
STATE OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

EDITH NYCUM,
Petitioner

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner Edith Nycum, petitions this Honorable Court for a Writ of Certiorari to issue to the Supreme Court of Pennsylvania; and would respectfully show:

Statement

The State of Pennsylvania cannot abridge petitioners right of freedom of the press as guaranteed her under Amendment I and XIV of the Constitution of the United States.

1. Petitioner has been denied freedom of the press as guaranteed her under Amendment I and XIV of the Constitution of the United States.

2. Petitioner was denied to be confronted with the witnesses against her as guaranteed her under Amendment VI of the Constitution of the United States.

3. Petitioner has been denied due process of Law as guaranteed her in Amendment V of the Constitution of the United States.

4. Petitioner was a victim of double jeopardy, which she is protected from under Amendment V of the Constitution of the United States.

5. And the equal protection of the law Amendment XIV the record shows no witnesses testified against petitioner.

The foregoing contsitutional questions were duly presented to the Superior and Supreme Courts of Pennsylvania by both the record exceptions and the brief of your petitioner but that the Superior and Supreme Courts of Pennsylvania disregarded petitioner's Constitutional Rights as presented of freedom of press; being confronted with the witnesses against her; due process of law, double jeopardy, and full protection of the law as guaranteed to her in the Amendments I, V, VI and XIV in the Constitution of the United States.

Petitioner stands convicted by the Supreme Court of Pennsylvania (R. 50) for hanging signs without a permit. Signs telling of the torture murder of her eighteen year old niece; and how the City of Altoona and County of Blair of Pennsylvania refused to hold a Coroners inquest into her death, or a hearing of any kind. (R. 53-54).

Petitioner was arrested, convicted and fined and in addition thereto was ordered to remove said signs

from her premises within twenty-four hours or suffer the penalty of being rearrested. This sentence was imposed by Police Court Magistrate Stevens (R. 12). The signs were not removed as petitioner had claimed her Constitutional Rights of freedom of press. She was rearrested on the same charges, locked in a common jail at 1:00 P. M.; bailed out 8:20 P. M., 10:30 P. M. said bail was refused (R. 16). Petitioner was again arrested and locked in jail and all property bail unlawfully refused (R. 34-35).

Petitioner appealed to Quarter Sessions Court of Blair County. At said hearing Petitioner was denied her Constitutional Rights of being confronted with the witnesses against her (R. 29). Petitioner's Attorney refused to present her evidence she had to demand her Constitutional Rights to present the evidence herself (R. 42) and the Court did not mark them as exhibits (R.32) the pictures of signs were entered as exhibits. (R. 32) Although petitioner told the Court she would not remove the signs because they had a story to tell; and had a right to continue the signs and disregard the ordinance. (R. 35) Judge Patterson found petitioner not guilty of doing electrical construction, or creating a nuisance, and found her guilty of not getting a permit for hanging said signs. No fines if signs were removed. (R. 21)

Petitioner appealed to the Superior Court of Pennsylvania (R 18). Appeal was granted and heard in part on October 26, 1944. Without hearing the case in its entirety; Judge Keller makes a decision dismissing the appeal at the Appellants cost (R. 50), naming a Supplemental Decree which is not a part of the record. (R. 47 and 51.) stating it was filed August 5, 1944. (R. 49) Petitioners appeal was prayed and granted February 25, 1944. (R. 18) March 17, 1944 the rec-

ord certified by the Prothonotary of Quarter Sessions Court as being a full, true and correct copy of the whole record of the case therein stated and that annexed papers are all of the original papers in said case as taken from the files in said office and of record to No. 23 October Sessions 1943. (R. 12) Judge Keller erred in going off record and quoting Supplemental Decree; instead of considering the record (R. 2-23)

Your petitioner petitioned the Court for a reargument through her Attorney Braun. (R. 27-46) Supplement to petition for reargument by Attorney McCabe. (R. 50-55)

Petition for reargument refused March 2, 1945 by the Superior Court of Pennsylvania by Rhodes, J. (R. 46)

Petitioner appealed to Supreme Court of Pennsylvania. (R. 47-48)

March 19, 1945 petition dismissed per Curiam by the Supreme Court of Pennsylvania (R. 50) The Court erred in not granting petitioners appeal and therefore denying her her Constutional Rights as presented to them.

Summary

That your petitioner was convicted by a Police Court Magistrate for allegedly violating three city ordinances: 1. Charging the crime of not getting a permit for hanging signs. 2. Doing electrical construction. without getting a permit. 3. Creating a nuisance. (r. 4)

Petitioner states these signs are a public petition for justice for a murdered girl who was never granted coroners inquest. or public hearing of any kind by the legal-

ly constituted authorities of Altoona City and County of Blair. (R. 53-54) And petitioner claims they conspired to deprive her of her Constitutional rights of freedom of press, to prevent her from telling of their unlawful acts. (R. 53-54.)

Your petitioner claims that the authorities of the City of Altoona, did under color of law, through the City Ordinances what they did not dare do in a forthright manner, in their effort to silence the publishers. A reading of the published matter below will show that the publishers invited prosecution for criminal libel, but the City authorities did not dare meet them on this issue, but choose an indirect method of silencing the publishers. (R. 52.)

TRANSCRIPT OF THE LETTERING OF SAID SIGNS

Sign No. 1

"BELIEVE IT OR NOT. This happened in America; a country that boasts to the world of its Christianity—Civilization, Constitutional Rights, and Justice for all. This would give Hitler a laugh. The fiend who tortured and murdered this girl is being protected by the men who are asking your vote for re-election. Let's vote for men who will obey and enforce our laws. Forget party—vote for safety of your loved ones. Where else on this earth could a fiend get away with a murder like this. Why did Mayor Rhodes exonerate him?"

Sign No. 2

"VOTERS OF ALTOONA AND BLAIR CO., THINK TWICE. Why does an ex-soldier, taxpayer, a man satisfied with his own wife have to

beg for justice for his murdered child. These City and County Officials, paid by the taxpayer to protect their rights have denied this girl the rights of all citizens of the U. S. When this body was raised for an autopsy at the families' expense; proved murder and cover-up. This child was tied and gagged; the elbows, and skin rubbed off inside of ankles shows struggle before lungs split and back broken. Does the fiend who murdered this child know so much on our officials—high and low—that they must protect him to the extent of calling this brutal murder a suicide—J. Edgar Hoover calls this murder."

Sign No. 3

"VOTERS, the parents of this murdered child are asking you not to vote for any man who is not free to state publicly that he will positively prosecute this brutal murder; is not free to prosecute others. Here are just a few things paid for by the taxpayer. Would you call this Justice? D. A.'s office and City Hall have two different sets of pictures of victim's bedroom, one in perfect order, bed made up as many saw it day of crime. Other in disorder, bed as tho' two people slept in it. Clothes not victims on bed. Parent's called by police before window glass was broken. Told daughter in Hosp. had jumped thro' window. D. A. said we called him before 3 A. M. He looked at clock. 1 6/10 Mi. to Hosp. out (victim dead) back before we called D. A. Death certif. stated died at 3:05 A. M. Our law states lived 20 Min. in Hosp. With both lungs crushed and split we want to prove that anyone that seen her alive,

saw her killed, after she had been gagged, tied, beat and tortured for hours.

Coroner refused inquest and so much evidence visable. See chart of injuries in window below. Buried without Drs. sig. on death certif. and fake autopsy. Two policemen took large bundle from Apt. morning of crime. Our law said local Dr. tested clothes for blood. Dr. said he did not. Our law refused to get bloody mattress that Emerick was allowed to exchange for another. Undertaker Saleme covered and lied about her injuries. Attorney S. H. Jubelirer took $250.00 from this family. $150.00 was for tests he never made one, or gave one cent back. This child never rated a hearing of any kind, but a Pig beat to death did. If out State laws can deny this child a fair trial and Wash. does not interfere, then we have no Justice. Any city or county official can invite Hoover to settle this, as Wash. is the only fair way now. Voters correct conditions here. here. Protect the prin. your sons are fighting for." (R. 53-54.)

Your petitioner further shows that the information was ordered against her by one Mayor Rhodes of the City of Altoona (R. 13) Mayor Rhodes name appears on these signs as exonerating him (R. 53) exonerating the man who said he was the only person with this murdered girl at the time she was murdered; and put him back on the police force, stating through a local paper there was not a Sintella of evidence implicating him.

Petitioner further shows that she appealed this case to Quarter Sessions Court as being from a purely

spite angle of Mayor Rhodes. (R. 13.) She further states that Mayor Rhodes was defeated for re-election and she claims over these signs, telling of this murder and the unlawful acts of the authorities in regards to it. These signs were made, printed, erected and maintained by her tenant, Mrs. Phillips, who has been in control of the Nycum House since 1928, where these signs are hung. (R. 29-30.) And Mayor Rhodes knew Mrs. Phillips was in charge of the Nycum House, as she has fed the City Prisoners since 1932, and Mayor Rhodes signed a check in her favor for feeding the city prisoners every month of his administration. Petitioner was taken from a sick bed, suffering a severe heart condition (R. 34.), and locked in the Altoona City Jail for nine hours. City authorities refused to accept property bail. (R. 35.) On May 31, 1943, petitioners tenant, Mrs. Phillips hung these signs, (R. 43.) telling of the torture murder of her niece and how officials of the City of Altoona and County of Blair refused to hold a Coroner's inquest or a hearing of any kind into her death; and how the said officials covered up to protect the murderer. (R. 53-54.) Copies of what appears on these three signs were filed at Superior Court (R. 53-54.), and pictures of signs and the house they hang on. (R. 54A-54B.) Pictures of the signs were also filed at Quarter Sessions Court. (R. 32.) These signs were hung May 31, 1943. November 15, 1943 was the first notice from anyone in authority. (R. 35.) City Electrician Downs came to the Nycum House and said: "I'm sorry, but the Mayor sent me, there is some wiring on your roof that is not right." Your petitioner said "there are a couple extension cords up there." He said "have them removed, and have an electrician put lights over your signs and it will be all right with me." The extension cords were

removed that same afternoon and have never been up since. (R. 35.)

On November 18, 1943, the matter of the above charges were brought on for a hearing before Alderman W. C. Stevens, specially presiding as Police Court Magistrate at City Hall, (R. 4.), and with an irregular hearing with respect to said charges and convictions; (R. 34-35-36) and without due process of law, petitioner was required to pay fines of Twenty-five ($25.00) Dollars for each of the alleged violations, or a total of Seventy-five ($75.00) Dollars, and was further ordered to remove said signs, pleading for Justice for a murdered girl, from the premises, or suffer the penalty of being re-arrested. (R. 12.) Petitioner demanded her constitutional right to hang signs to get Justice before this Magistrate. Said signs so ordered to be removed being in form. (R. 53-54.) Petitioner claims this verdict deprived her of freedom of the press, as guaranteed her in Amendment I and XIV of the Constitution of the United States.

Petitioner did not remove the said signs as she thought the printed matter on them (R. 53-54) gave her the right of freedom of speech under Amendment I and XIV of the Constitution of the United States. And petitioner was again arrested on the same three charges; warrant issued from Alderman Stevens office November 20, 1943, by order of Mayor Rhodes. (R. 13.)

That on the occasion of said second arrest on November 20, 1943, petitioner was in extremely ill health and suffering from a severe heart condition, and was in danger of her life if imprisoned. And that it was well known to the Mayor, City Solicitor, and Police Magistrate that petitioner was not in control of the Nycum House, where the signs were hung.

That notwithstanding said facts petitioner was imprisoned in the common jail of the City of Altoona from 1:30 P. M. to 8:20 P. M. on November 20, 1943, when Attorney Frank Warfel became her bondsman and caused her to be released. She was released until 10:20 P. M. that evening, when Attorney Warfel's bond was refused, (R. 16), he said by Mayor Rhodes and City Solicitor Jubelirer. Mayor Rhodes and City Solicitor Jubelirer's names appear on these signs. (R. 53-54.)

Petitioner was again arrested the third time, on the same three charges, and locked behind the bars of City Jail. Lieutenant Harry Carey, testified at Quarter Sessions Court that he ordered the arrest on November 20, 1943 under direction of Mayor Rhodes. (R. 32.) She then tendered to the authorities as security for her appearance at any time in the future her own real estate at 1210 Thirteenth Avenue (next door to City Hall) in the City of Altoona, containing 34 rooms and eight baths, and of the reasonable value of $40,000.00 and was told by Lieut. Carey that "no property bail would be accepted. Her brother, E. B. Nycum, owner of property at 1022 Lexington Avenue, Altoona, and of property at Greenwood, Altoona, both unencumbered and solely owned and of the reasonable value of $15,000.00 offered his properties, and Lieut. of Police Carey refused to permit petitioner to be bonded by said brother's properties as surety.Again stating "no property bail would be accepted. (R. 34-35.) When Lieut. Carey was asked who was turning down all this bail, he replied: "Jubelirer (City Solicitor) and Stevens, (Police Court Magistrate).

Petitioner states that she was arrested three times on the same charges; locked in jail and all property

bail refused for the act of another; which deprives her the rights guaranteed her under Amendment V of the Constitution of the United States.

Petitioner claims that the authorities of the City of Altoona were prosecuting her to get these signs down, that they used Ordinances to silence the publisher. That they did not dare meet her in a forthright manner. (R. 52.)

As the above-quoted signs constituted a public petition for Justice for a murdered girl, telling of the refusal to prosecute, and the effort to protect the man who murdered this girl. (R. 53-54), take preeminence to any City Ordinance; and the effort of the Officials of the City of Altoona to enforce regulation against petitioner to force her to remove said signs; violated her rights of freedom of press guaranteed her under Amendment I and XIV of the Constitution of the United States.

Petitioner thereupon filed her appeal from the aforementioned convictions of November 18, 1943, and her arrest of November 20, 1943, to the Court of Quarter Sessions of Blair County on November 22, 1943, (R. 12-13.)

That on January 21, 1943, a purported trial of said charges came on for hearing before Judge George G. Patterson of the Quarter Sessions Court, and petitioner says that under the laws of the Commonwealth of Pennsylvania, and the Constitution of the United States, Amendment VI, said hearing was required to be a hearing de novo, but petitioner says that said hearing was not held in accordance with the requirements of the said laws and was not denovo as required thereby. (R. 6). No witnesses testified against

petitioner for City of Altoona. (R. 29.) Only petitioner and her two sisters testified, and testified in her defense. Lieutenant of Police Carey, testified he ordered the arrest of November 20, 1943 by order of Mayor Rhodes. (R. 32.) Mayor Rhodes did not appear against petitioner at Quarter Sessions Court. (R. 32 to 43.)

Petitioner was denied to be confronted with the witnesses against her, which right is guaranteed her in Amendment VI of the Constitution of the United States. Judge Patterson, although furnished an official stenographer by the Commonwealth of Pennsylvania to take down and record the testimony of all witnesses appearing and preserve the same as a part of the record of said Court, failed to preserve the same as a matter of record in said proceeding, although the official stenographer was present and did take the testimony. (R. 7-12 and 28)

Petitioner further states that in advance of said hearing before his Honor, George G. Patterson, she had instructed her attorney Frank Warfel, to secure for her a copy of the official testimony at said hearing; that she further personally made a request to the Court Reporter for a copy after the hearing; as the Court Reporter was leaving the Court room, that she was informed by Court Reporter that she could have such copy for forty-five cents a sheet. (R. 28) and said to call for same in two days; that petitioner called as requested and was then informed (for the first time) that she could not have such copy without a Court order, which Judge Patterson refused to furnish, saying: "there was no official testimony taken in petitioner's case, (R. 28.), and petitioner says that Judge Patterson told her attorney he had taken the testimony for his own use and later destroyed it. (R. 29) Petitioner states that she pro-

vided a Notary Public stenographer, at her own expense, who took full stenographic transcript of all the testimony taken before Judge Patterson, January 21, 1944, on hearing of City of Altoona vs. Edith Nycum (R. 32-43) and made affidavit to verity of same. (R. 44.)

Petitioner's attorney appealed this case to Quarter Sessions Court, as a spite angle by one Mayor Rhodes, and the fines likewise a spite action, (R. 13) and he refused to prosecute the case on said action, or on petitioner's Civil Rights; he did say to the Judge that it is a question if these are the type of signs that require a permit. (R. 40) Mayor Rhodes did not appear at Quarter Sessions Court.

Petitioner's Attorney Warfel had in his possession the evidence that would have completely cleared her, and he refused to present it. Namely an O. P. A. form (R. 52C-52D) showing petitioner duly registered the Nycum House as Mrs. Phillips being her tenant, with the O. P. A. Altoona-Johnstown Rent Area Office, when the registration became necessary. And an O. P. A. form, (R. 52A-52B) showing Mrs. Phillips as proprietor of Nycum House and that she registered the rooms with the same O. P. A. office. A doctor's receipt, showing the doctor made house calls on your petitioner on May 28th, 29th, and 31st, 1943, (R. 53.) The signs were hung May 31, 1943, and a petition signed by the neighbors headed: "We, the undersigned are neighbors of Miss Edith Nycum, have never thought these signs begging for Justice for a young girl, unsightly or a nuisance." (R. 36.) Your petitioner's attorney refused to present this evidence and pleaded her guilty of one charge, (R. 40.), which

denied petitioner the assistance of counsel for her defense, guaranteed to her under Amendment VI of the Constitution of the United States. Your petitioner was forced to arise in Court and demand her Constitutional rights to defend herself. And she presented her evidence in the following language.

> "I am demanding my Constitutional rights. I want to prove that I did not hang these signs. I rented my property to Mrs. Phillips. Here's an O. P. A. paper showing Mrs. Phillips rents my house and here's a doctor receipt. The doctor was at my house on May 28th, 29th, and 31st. I had a heart attack on May 28th and on May 31st I had the second attack. That was the day the signs were hung, and I was in bed practically all summer. In 1928 I rented my home to Mrs. Phillips. I went to New York to attend beauty school, came back. In the spring of 1930 I rented the two front rooms from Mrs. Phillips for a beauty parlor. The lights in the display window and beauty parlor are on my meter, paid for by me. The lights on the porch roof, over signs, and in the house are on Nycum House meter, paid for by Mrs. Phillips. I had nothing to do with printing the signs, making the signs, or hanging them. I was in bed with a heart condition." (R. 42.)

Petitioner further says that with all this evidence showing her innocence from any charges, and no witnesses appearing against her, Judge Patterson refused to find her innocent of the charge of violating the Ordinance of said City, although he identified Mrs. Phillips as being responsible for the signs when he called her to the witness stand and asked Mrs. Phillips "what do you propose to do about these signs?"

And Mrs. Phillips answered in the following language: (R. 43.)

> Witness, Mrs. Phillips: Mr. Jubelirer said Mr. Downs had stated at the hearing that the light cords were still up. Mr. Downs did not say the light cords were still up. There sits the parents of the girl, it cost us thousands of dollars to get the evidence on these signs. It is the only way we have of getting it to the public. The papers will not print anything. Who says these signs are unsightly? It is not one man's opinion, but the opinion of the public, or your neighbors. The whiskey signs on our streets are unsightly to me. I think these signs are as patriotic as war signs, both fighting for democracy. We put them up to bring this man to justice. I would be satisfied to take the top one down, but not the other two. They are the same as awnings. (R. 43.)

And although the evidence before said Judge had shown that petitioner had no control over said premises, had not erected or maintained said signs; which said control and possession was further affirmatively established before said Court by certain exhibits, O. P. A. forms, (R. 52A-52D.) Doctors receipt, (R. 53) and Petition the neighbors signed, headed: "We, the undersigned are neighbors of Miss Edith Nycum have never thought these signs begging for Justice for a young girl, unsightly or a nuisance." (R. 36) submitted to and examined by and considered by said Judge, but disregarded and not listed as exhibits, (R. 32 and 42.) All of which denied petitioner due process and equal protection of the law, denied to be confronted with the witnesses against her, suffered double jeopardy, rights guaranteed her under Amendment V, VI and XIV of

the Constitution of the United States. Picture of signs. (R. 54A and 54B) were listed as exhibits. (R.32)

Although petitioner told the Court she would not remove the signs, because they had a story to tell, and had a right to continue the signs and disregard the ordinances. (R. 35) Judge Patterson found petitioner guilty of not getting a permit for hanging signs that are a public petition for Justice for a murdered girl; who has been denied her Constitutional Rights of cor. inquest into her death by Altoona City and Blair County officials. Thereby depriving petitioner of her Constitutional Rights of freedom of press, guaranteed her under Amendment I and XIV of the Constitution of the United States. (R. 5)

Attorney Braun entered with his appeal for Reargument, a photostatic copy of the report of the case as it appeared in the Altoona Mirror paper on January 21, 1944 which shows that the rule was made absolute after testimony was taken on the rule; and after that arguments were made by counsel for both parties and the order was made reducing the fine in Quarter Sessions Court. (R. 44 and 45.)

The Court erred in failing to grant the petitioner a trial de novo after making absolute the rule to show cause why she should not be allowed to appeal from a Summary Conviction and finding her guilty without such a trial. (R. 5.) Where a rule to show cause why an appeal from a Summary Conviction is made absolute, it is error to find the defendant guilty without a trial de novo. (R. 5.) This purported trial did not conform to the Constitutional Rights of petitioner in that she was denied the right of being confronted with the witnesses against her; the assistance of counsel

for her defense, and due process of law, which is her right under Amendment VI and V of the Constitution of the United States.

On February 9, 1944, petitioner retained Attorney Robert Braun, of Pittsburg to appeal said case to Superior Court of Pennsylvania. Attorney Braun retained Attorney Wagner, an appellant attorney, to appeal said case. Attorney Wagner entered petitioner's appeal on February 25, 1944, (R. 18.), said case to be heard at Pittsburgh week beginning April 10, 1944, continued till September 25, 1944 to be heard at Philadelphia, (R. I.) Your petitioner's attorney told her it was continued by City of Altoona to September 25, 1944, petitioner was again told by her attorney that case was continued to some time in October. On September 25, 1944, petitioner went to Superior Court at Philadelphia and asked to see the evidence her attorney filed. There was not a word filed in her defense. And not a word filed accusing her. (R. 1-2.) This was the first petitioner knew Attornew Wagner was her attorney, on her appeal to Superior Court.

On October 3, 1944, without notice to petitioner, Attorney Wagner had her case put on the short list, (R. 24.) Petitioner's attorney refused to use her evidence as to her Civil Rights of freedom of press.

October 26, 1944 petitioner filed her Substitute Assignments of error (R. 23) and brief, (R. 2-18.)

October 26, 1944. Argued, (R. 1.)

October 26, 1944 at Superior Court hearing, City of Altoona did not file a brief or have a representative present. There was not one word entered against your petitioner (R. 2.)

October 26, 1944, at the time of the hearing, before Judge Keller, petitioner's counsel arguing said case stated that when he and an associate of counsel for petitioner, talked to the Lower Court Judge, the Lower Court Judge stated a stenographic transcript was made for his convenience and the same was not filed of record; but was destroyed when he was through with it. (R. 28-29.)

And on December 13, 1944, without a hearing, without one word of evidence filed against petitioner; and all this evidence in her defense, the Honorable William H. Keller, Judge of the Superior Court of Pennsylvania, filed his opinion and decree dismissing the appeal herein. (R. 25-27) naming a Supplemental Decree as an authority in his decision, (R. 51.), said Supplemental Decree is not a part of the record.

Petitioner alleges that Judge Keller erred in denying petitioner her Constitutional Rights of freedom of press as presented in arguments of petitioner's attorneys and the record on said appeal. Judge Keller erred in making a decision without hearing the case in full. He erred in going off record to make his decision, and deprived petitioner of due process of law, of being confronted with the witnesses against her, as guaranteed to her under Amendments I, VI and XIV under the Constitution of the United States.

Thereafter on December 23, 1944, your petitioner, through her attorney Braun, filed a petition for reargument before the Superior Court of Pennsylvania; as follows in part: (R. 28-32.)

Second.

That in said opinion it was said: "The proceedings at the hearing on the return day were not officially

taken down in shorthand; but appellant's counsel stated at the argument that the judge's secretary took stenographer's notes unofficially, and that the defendant had a stenographer present who also took notes. No notes of testimony were transcribed and filed."

Third.

That the said quoted statement was not in exact conformance with the facts or statements made at the argument, at which time counsel stated that the testimony was taken by the official court stenographer in shorthand and had (fol. 42) transcribed the same but that they were not filed of record but that the said stenographer would not furnish a copy of said testimony without the order of the lower court judge, who refused to order the same furnished, although the petitioner was ready and willing to pay the required asking price of forty cents ($0.40) a page for the said copy.

Fourth.

That counsel at the argument also stated a request was made of the Prothonotary of the Court of Common Pleas of Blair County and in reply to this request, the said Prothonotary stated: Dear Sir: "In answer to your communication of July 22nd regarding a copy of the official testimony in the above case. This case came up while I was ill and away from the office. However, sometime ago Miss Nycum came in and requested a copy which I advised her, at the time, I did not have. I then went with she and her sister to the Judges Chambers and he told them that there was no official testimony taken in their case, and he so advised me yesterday." Sincerely, (S) John B. Elliott.

Fifth.

That counsel arguing said case also stated to your Court that when he and an associate of counsel for your petitioner talked to the lower court judge on July 31, 1944, requesting that the record be put into proper shape and a copy of the testimony be filed, that the lower court judge stated that there was a custom in that court that no "official (fol. 43) testimony" is taken unless a "formal request" is made for the same, and that, although a stenographer transcript was made, it was only for his convenience and the same was not filed of record but was "destroyed" when he was through with it, although he did not state what, if any, use was made with it or could have been made with it if the "trial de novo" had actually been held and sentence passed at its termination.

Sixth.

That there was at no time any trial de novo as required by law, and no one testified on behalf—the City of Altoona.

Sixteenth.

That the appeal in said case was filed in your Court on February 25, 1944, well within the appeal time, provided for by Act of Assembly, and that your petitioner is advised that this is sufficient and that the same is not too late; 1897 P. L. 67, Sec. 4, and Amendments, 12 P. S. 1136, and that the records in your Court will disclose this as well as the acceptance of service thereof by the Solicitor for the City of Altoona. (R. 31.)

Attorney McCabe's supplement to petition for reargument filed February 15, 1945. In part as follows: (R. 51-52).

Twentieth.

The Opinion of the Court, filed December 13, 1944, in the Fourth Paragraph thereof, refers to a "Supplemental Decree," stated to have been filed August 5, 1944, by the Lower Court. It appears to counsel that the paragraph immediately following the quotation from the Supplemental Decree, indicates that this Supplemental Decree formed the basis for the Decision and Opinion of your Honorable Court. The attention of your Honorable Court is called to the fact that this Supplemental Decree was not part of the record certified by the Court below to be the entire record. It is submitted that the Appelllant is entitled to be heard on this subject.

Twenty-First.

There is submitted herewith two photographs of the said signs, showing the position of the signs at two periods of the proceedings. There is submitted also a transcript of the lettering of the signs.

It is urged that the prosecution framing the basis of this appeal was obviously for the purpose of doing indirectly, what the authorities of the City of Altoona did not dare do in a forthright manner. A reading of the published matter, indicates that the publishers invited prosecution for criminal libel, but the authorities did not dare meet them on this issue, but chose an indirect method of silencing the publishers. Wherefore your petitioner repeats the prayer of the original Petition for Re-argument, or for such other relief as to your Honorable Court may seem fitting. Respectfully submitted, (Signed Louis F. McCabe. (R. 51-52.)

March 2, 1945, Petition for Re-argument to the Superior Court of Pennsylvania refused, (R. 2.)

January 27, 1945, Petition for allowance of appeal from Superior Court to Supreme Court of Pennsylvania filed by petitioner's attorney, Louis F. McCabe. (R. 47)

The Supreme Court of Pennsylvania on March 19, 1945 filed an opinion affirming the conviction of petitioner; which opinion is contrary to the opinion of The United States Supreme Court in this case as appears in 303 U. S. 444 ordinance was decreed unconstitutional as denying freedom of the Press.

That your petitioner in the trial court relied upon the following Federal Questions.

1. "The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievences, shall not be infringed." Records of the United States Senate, IA-C2 (U. S. Nat. Archieves)

2. Petitioner further relied upon the provisions of Amendment I and XIV to the United States Constitution to the effect that the statute under which your petitioner was indicted is un-Constitutional by reason of said Amendment I and XIV, which makes illegal and void any state law that abridges freedom of the press.

3. The State of Pennsylvania cannot abridge petitioners right of freedom of the press as guaranteed her under Amendment I and XIV of the Constitution of the United States.

Jurisdiction

This Court has Jurisdiction to review the opinion of the Supreme Court of Pennsylvania for the reason that it involves the following distinct Federal Questions.

1. The petitioner having been heretofore convicted by a Quarter Sessions Court of Blair County; and that conviction having been affirmed by the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania, (R. 47 and 50) that petitioner has finality of judgment in the highest State Courts available to her. And on petition for Writ of Certiorari to the United States Supreme Court.

2. The Pennsylvania Supreme Court is bound by the decisions of the United States Supreme Court, when Federal questions are involved.

3. That petitioner has been denied her Constitutional rights of freedom of the Press; as assured her in Amendment I and XIV, Section I of the Constitution of the United States.

4. That she has been denied due process of the law; her right to be confronted with the witnesses against her. Her right to the assistance of counsel for her defense. She was arrested three times for the same alleged offense. First arrest she was convicted and fined; second and third arrest she was locked in a common jail and all property bail was refused. She was arrested for the act of another; all of which has denied her her Constitutional Rights assured her under Article V, VI, and XIV of the Constitution of the United States.

5. That petitioner stands convicted by the Supreme Court of Pennsylvania, and the record shows that

there is not a word of evidence against petitioner; oral or written. The record contains only evidence in her defense, which has denied Petitioner due process of law and the equal protection of the law, guaranteed her under Article XIV, Section I, of the Constitution of the United States.

The foregoing constitutional questions were duly presented to the Superior and Supreme Courts of Pennsylvania by both the record exceptions and the brief of your petitioner but that the Superior and Supreme Courts of Pennsylvania disregarded petitioner's Constitutional Rights as presented of freedom of press; being confronted with the witnesses against her; due process of law, double jeopardy, and full protection of the law as guaranteed to her in the Amendments I, V, VI and XIV in the Constitution of the United States.

That petitioner believes the decision of the Supreme Court of Pennsylvania upholding the conviction of your petitioner for not getting a permit for hanging signs on her home telling of the torture murder of her niece and how the Altoona City and Blair County officials refused to hold an inquest into her death and set about to protect the murderer. That petitioner has been denied freedom of press through a City Ordinance; and believes the decision of the Supreme Court of Pennsylvania is contrary to the opinion of this Honorable Court in the identical case of Lowell V. Griffin, 303 U. S. 444. The Court decreed ordinance unconstitutional as denying freedom of press.

In People V. Green, 85 APP. Div. 400. 83 NY SUPP 460. This court held that municipality was without power to prohibit freedom of the press, by Ordinance.

Wherefore it is respectfully prayed that this petition for a Writ of Certiorari be allowed and that the Writ be granted to review the Judgment and opinion of the Supreme Court of Pennsylvania, and your petitioner will ever pray, etc.

EDITH NYCUM
Altoona, Pennsylvania

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The opinion of the Supreme Court of Pennsylvania sought to be reviewed appears in the record filed herein on Page 50.

Jurisdiction

Your petitioner contends that the State of Pennsylvania is bound, when Federal questions are involved by the decision of the United States Supreme Court; that the United States Supreme Court decided this identical case as reported in Largent v. State of Texas, 318 U. S., 418. Where the accused was convicted for violating a city ordinance, which accused contended violated the XIV Amendment. And this Court reversed the decision of the highest State Court of Texas available to accused. Your petitioner is relying on the first and fourteenth Amendment of the Constitution of the United States. No State shall make or enforce any law which shall abridge her freedom of the press, as guaranteed by the first and fourteenth Amendments.

In Jamison v. State of Texas 318 U S 413 Mrs. Ella Jamison was convicted of violating a city ordinance prohibiting distribution of handbills on the street

of the city. And she appeals. We think the judgment below must be reversed because the Dallas ordinance denies to the appellant the freedom of the press and of religion guaranteed to her by the first and fourteenth Amendment of the Federal Constitution.

Likewise in Lovell v. Griffin, Ga. 303 U. S. 444. Ordinance was decreed unconstitutional when denying freedom of Press.

Near v. Minnesota, 283 U. S. 697, freedom of press. Protected.

Cantwell v. Connecticut, 310 U. S. 296. Ordinance is void. Freedom of speech and press. Protected

Constitutional Law 90, 274.—Freedom of speech and of the press which are protected from congressional infringement by first amendment are among fundamental personal rights and liberties protected by fourteenth Amendment from invasion by State action. Constitutional Amendment I and XIV.

Constitutional Law 254—Municipal Ordinances adopted under state authority constitute state action and are within prohibition of fourteenth Amendment. Constitutional Amendment XIV.

Constitutional Law 90,274.—The "liberty of the press" is not confined to Newspapers and periodicals but necessarily embraces pamphlets, leaflets and every sort of publication affording a vehicle of information and opinion. Constitution Amendment I.

Petitioner states these signs constitute a public petition for justice, and she is relying on the first and fourteenth amendment of the United States Constitution.

SOCIAL IMPORTANCE OF THE QUESTION INVOLVED.

To apply the interpretation to the statute involved, and under which your Petitioner was indicted which Pennsylvania Supreme Court has applied would tend to demoralize the citizens and especially the Youth of Pennsylvania. When men in authority refuse to prosecute the murderer these signs tell of, and cause an American family to hang signs in their effort to force the men in authority to do the duty of their office. To silence the publisher these same officials took your petitioner out of a sick bed and locked her in a common jail; and unlawfully refused all property bail; because her sister hung these signs. If City Officials can do this and the highest Court in the State affirm it, and petitioner could not claim protection from the highest Court in our Country for her Constitutional Rights, this would tend to promote crime. If your petitioner would be forced to take these signs down and the murderer they tell of go uncondemned, it would tend to destroy the citizens faith in the laws of our Country, under Pennsylvania interpretation of the statute, citizens would have to suffer persecution, and fear our law instead of feeling secure in them. Pennsylvania's decision would tend to destroy freedom of speech and press, due process of law, and equal protection of the law. Such a decision denies to the citizens the privileges and immunities guaranteed by the United States Constitution.

CONCLUSION

Symmetrically and logically stated, the proposition is this:

On November 16, 1941, Petitioner's eighteen year old niece was murdered by her husband of six months, a city policeman, who said he was the only person with her when she jumped through a window glass. In spite of the condition of her body, the City of Altoona and County of Blair authorities branded this victim a suicide and refused to hold cor. inquest. Four days later the bruises were showing through the mask she was covered with, so bad they were forced to hold a mock autopsy which was never filed at the Department of Vital Statistics in Harrisburg, Pa., as no doctor would sign it as suicide. No doctor signed her death certificate. Father's name was forged on death certificate. Officer Aurandt called the parents before the window glass was broken and told them their daughter was in the Mercy Hospital, that she had jumped through a window. And many other facts that told victim's family of the horrible condition existing here. (Read the transcript of signs. R. 53-54.) Petitioners attorney made a plea through a local paper for an inquest. Two months after this murder this victim's family, at their expense raised her body for an autopsy performed by Dr. Brucken of Pittsburgh, Pa.; Dr. Lorenza of Punxsutawney, Pa., and Dr. Hurlick of Phillipsburg, Pa., and found victim was tortured for hours before she was killed. For some reason these doctors opinions were not printed in our local papers, in spite of the family! Attorney again publicly requested an inquest. After a long fight to clear this child's name of suicide, on May 31, 1943, Mrs. Phillips hung these signs telling of the illegal acts of these officials. Petitioner was in bed with a severe heart condition. She did help to compose what is on the signs; but the authorities are not disputing that. These signs are the only way this victim's family

have of getting to the public the injustice they have suffered. Can the State of Pennsylvania successfully prosecute your petitioner and silence the publishers, and prevent petitioner and her family from trying to clear her niece's name of suicide and trying to bring the fiend who murdered her to justice in view of the safeguards guaranteed Citizens of the United States by the Constitution of the United States?

Respectfully submitted,

EDITH NYCUM,
Altoona, Pennsylvania

Petitioner prays your Honorable Court will overlook her layman's effort to convey these facts set forth as shown by the record of how she has been denied her Constitutional Rights.

This case has been prolonged with no fault of petitioner, and for financial reasons she feels she cannot afford another Attorney, and she will ever pray.

EDITH NYCUM,
Petitioner

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No. 275

EDITH NYCUM, Petitioner,

vs.

CITY OF ALTOONA
STATE OF PENNSYLVANIA

PETITION FOR REARGUMENT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Edith Nycum respectfully represents the following:

FIRST

That she was the petitioner in the above captioned case which was before your Court and she prays that your Honorable Court will grant her a rehearing.

SECOND

Petitioner claims the record as sent up from the Supreme Court of Pennsylvania is unjust, unconstitutional and un-American as it contains only records, petitions, brief and evidence filed by your petitioner. Although petitioner served a Writ of Certiorari to the Superior Court of Pennsylvania on the Trial Court of

Blair County. The certified record from the Supreme Court of Pennsylvania does not contain a Record sent up from the Trial Court. September 25, 1944, your petitioner obtained a copy of the docket of Superior Court, certified as being full and complete on case City of Altoona v. Edith Nycum. These docket entries contains an order permitting my attorneys to borrow the record. Copy as follows:

In the Superior Court of Pennsylvania CITY OF ALTOONA, Plaintiff v. EDITH NYCUM, Defendant. October Term, 1944, No. 72. Appeal of ..... ORDER TO TAKE RECORD OUT OF COURT. And now, June 26, 1944 the Prothonotary of this Court permits MILTON SAFIER, Esq., Attorney for Appellant above named, to take the Record in the above case out of Court for the purpose of printing same, and to retain it until the 26th day of July, 1944. This order is granted on the express condition that the record be returned in the same condition in which it shall be received; and that it shall not be unbound or taken apart by the printer or by anyone else. For violation of this order, the Court may dismiss the appeal. (Signed) E. W. MIXSELL, Deputy Prothy.

The docket entries does not show this record was returned on the 26th day of July or any other day. The record before your Honorable Court does not contain this record; and no brief and no appearance for Appellee.

THIRD

Your petitioner claims that the Courts of Pennsylvania and her attorneys conspired to deprive her of her Constitutional Rights of Freedom of the Press; equal protection of the law; due process of law; being confronted with the witnesses against her, a speedy,

impartial and public trial, subjected her to triple jeopardy and denied her assistance of counsel in her defense.

(a) The City of Altoona arrested petitioner three times on the same charge for the act of another. First arrest Police Court Magistrate convicted and fined her on perjured evidence. Second and third arrest petitioner was locked in a common jail and all property bail refused.

(b) Judge Patterson of the Trial Court granted petitioner's appeal and without a trial de novo held her guilty on the charge, not getting a permit. Denying petitioner her Constitutional Rights of being confronted with the witnesses against her. Petitioner's exhibits was submitted to and examined by Judge Patterson; but not recorded as exhibits. Judge Patterson destroyed the official record of testimony. And five months after petitioner's appeal to the Superior Court of Pennsylvania was granted and Writ of Certiorari served, Judge Patterson unlawfully made a Supplemental Decree which falsely states several witnesses for the City of Altoona testified. No record from Trial Court filed at the Superior Court of Pennsylvania.

(c) Petitioner was granted an appeal to the Superior Court of Pennsylvania February 25, 1944. This hearing was continued from time to time. On October 26, 1944 it was heard in part. With no record from the Trial Court filed and no brief or appearance for Appellee, Judge Keller continued the hearing, telling petitioner's attorneys they could file more evidence in support of their contentions. On December 13, 1944, without a hearing, the Superior Court speaking through Judge Keller handed down an opinion, stating no merit in this appeal, going off record basing their opinion

on the illegal Supplemental Decree Judge Patterson made five months after the Writ of Certiorari was served on the Trial Court. This Supplemental Decree was in the prothonotary's office of the Superior Court attached to the record. The Prothonotary read a letter from Judge Keller explaining it was put there for safe keeping.

(d) Petitioner's attorney filed her petition for reargument December 23, 1944 and with no record from the Trial Court filed, no brief or appearance for Appellee, and all this evidence filed by your petitioner's attorneys as appears on the record that is before your Honorable Court, showing your petitioner was denied freedom of press, equal protection of our laws, due process of law, a speedy, impartial and public trial, being confronted with the witnesses against her, suffering triple jeopardy and being denied the assistance of counsel in her defense. The Superior Court denied petitioner's petition for reargument.

(e) Your petitioner appeaied to the Supreme Court of Pennsylvania. This appeal was denied.

FOURTH

Your petitioner was arrested by the City of Altoona for not getting a permit for hanging signs which tell of the torture murder of her niece and how the City and County Officials denied this murdered girl a coroner's inquest or hearing of any kind, thus depriving her her Constitutional Rights of Freedom of Press. These signs were not printed, made or hung by your petitioner, and she was not in control of the house they hang on. These signs were hung by Mrs. Phillips in her attempt to force the Blair County officials to hold a Coroner's inquest for her murdered

niece. Judge Patterson of the Trial Court was familiar with the facts of this murder; as we had appealed to him to force a Coroner's Inquest and left in his office the charts of this murdered girls injuries, as seen on pages 19 and 20, also the autopsy to back them and other evidence.

A committee from the Blair County Ministerial Association appealed to Judge Patterson to appoint a special grand jury to investigate this murder. Judge Patterson held me guilty of not getting a permit for hanging signs begging for Justice for a murdered girl.

FIVE

WHY PETITIONER IS BEFORE YOUR COURT WITHOUT COUNSEL. YOUR PETITIONER WAS DENIED THE ASSISTANCE OF COUNSEL FOR HER DEFENSE.

(1) Your petitioner being ignorant of law retained City Solicitor Jubelirer to prosecute a City Policeman who murdered her niece. Before he took the case he said he would have to go to City Hall and see the Mayor (Rhodes). She asked him why? He said he wanted to see if his hands would be tied. Later he said it was all right. Petitioner told him there was three things she wanted done. 1. Get the State Police on the case. 2. Get her niece's clothes tested for blood. 3. Get permission for the parents to go to their daughter's apartment to check her clothes. He said he could do all three. She gave him One Hundred Dollars retainer. He did not do one of these things. She told him she had made arrangements to borrow One Thousand Dollars. He said if you have some money to spend I will give you a fling for it. Two days later he asked for Two Hundred Dollars more, stating he wanted to make

some tests. Petitioner could only raise One Hundred and Fifty Dollars. He said that would do. She gave it to him. That night a friend told her Jubelirer being City Solicitor and Emerick being a City Policeman he would be on both sides. Next day she called his office to dismiss him. Later went to his office to get her money and Infra Red pictures of the apartment a friend had made for the family. He refused to refund the money or the pictures, he gave the pictures to District Attorney Wray. When Wray was defeated for re-election he took our pictures and all the evidence on the Emerick murder case from the district attorney's office to his home, stating there may be a trial on this some day. He told us our pictures showed blood spots. Petitioner told Attorney Jubelirer if he did not refund her money she would appeal to the Bar Association, as he had unlawfully taken it, as a lawyer could not be on both sides of the same case. He would not give her money back. He did not defend her. He and Mayor Rhodes did have her arrested for not getting a permit for the signs Mrs. Phillips hung telling of the unlawful acts of City and County Officials in the coverup of the murder of her niece. City Solicitor Jubelirer and Mayor Rhodes names appear on these signs (R. 53-54) City Solicitor Jubelirer prosecuted petitioner at Trial Court where she was convicted without being confronted with witnesses against her.

(2) Petitioner's Attorney Puderbaugh refused to defend her at City Hall hearing, stating it was no place for an ethical attorney.

(3) Petitioner retained Attorney Warfel to appeal City Hall hearing to Quarter Sessions Court. Attorney Warfel refused to claim her rights of freedom of press, refused to subpoena the witnesses who perjured themselves at City Hall, refused to present the evi-

dence that would have proved she was physically unable to make, print or hang the signs, was not in control of the house they hang on and the petition the neighbors signed, headed "we the undersigned are neighbors of Edith Nycum have never thought these signs begging for Justice for a young girl unsightly or a nuisance." Petitioner had to arise and demand her Constitutional Rights and present this evidence herself (R. 42-43). He pleaded her guilty of not getting a permit to hang the signs.

(4) February 9, 1944 petitioner retained Attorney Braun of Pittsburgh to take an appeal from Quarter Sessions Court to the Superior Court as a civil rights case. She gave Attorney Braun the transcribed certified record of testimony taken by a Notary Public Stenographer at petitioner's expense, and all evidence pertaining to this case. Attorney Braun retained Attorney Samuel Wagner, Berger Building, Pittsburgh, as an associate attorney. My appeal was returnable first Monday of March at Philadelphia, continued to April 10, 1944 and transferred to Pittsburgh; continued to September 25, 1944, and transferred back to Philadelphia. Attorney Braun said it was being continued because the Trial Court would not send up the record of testimony, September 25, 1944 petitioner went to Superior Court and got a copy of the docket. There was no Trial Court record filed, although Superior Court docket entries shows the record had been borrowed by my attorneys, and no evidence filed for me or against me. I learned Attorney Wagner and District Attorney Lang had had my case put on the short list without my knowledge. Petitioner's case was continued to October 26, 1944, and this is the first petitioner saw her appeal or brief (R. 2 to 18 and 22). Petitioner told her attorney she was not satisfied with

the brief, as he had promised to fight this as Freedom of Press and other Constitutional Rights. He said we are going to argue those points; and if we do not argue to suit you, you can tell the Judge you are not satisfied and argue it yourself. Attorney Wagner did tell the Court why the signs were hung and what was on them. And that Judge Patterson had told him he had destroyed the official record of testimony. He told how Mrs. Phillips was in control of the house, and had made, printed and hung the signs, also told his client had a Notary Public Stenographer take the testimony in short hand, transcribed and certify it. Judge Keller then stopped the hearing and told the attorneys to get their testimony on file and any other evidence in support of their contentions.

December 13, 1944, the Superior Court speaking through Judge Keller handed down an opinion without a hearing, going off record naming the Supplemental Decree. After reading this opinion in the paper we went to Pittsburgh. Attorney Braun seemed very much surprised that the Superior Court would hand down an opinion without a hearing. He said we will take out a Petition for a re-hearing right away. He told us to go over to Attorney Wagner and tell him to prepare it. Attorney Wagner was angry, said he would not do it, that he never heard of such a thing being done. Attorney Wagner told us that on the day Judge Keller handed down his opinion he had called Daniels (Prothonotary) at Superior Court and asked him if there was any decisions handed down? He said there was a couple, naming the local ones (Pittsburgh). He said he asked him if there wasn't any others? Mr. Daniels said, "Oh yes, there was one from Altoona. He told us he said: "Man that is the one I am interested in." We said Mr. Wagner were you expecting this

decision and you have not filed your brief yet? Just a couple days before we had received a letter asking for a hundred dollars for printing this brief. While looking through Attorney Wagner's files, I seen how the expenses were deducted from the Five Hundred Dollars I gave Attorney Braun and the balance divided between them.

The following is a copy of a letter I wrote Attorney Braun.

1210 13th Ave., Altoona, Pa. 12-19-44

Robert H. Braun, Jr.
Jones Law Building,
Pittsburgh, Pa.
Dear Mr. Braun:—

If you are not into this, do something to right the wrong that has been done? I felt all summer there was something wrong when you kept putting this off as you did. I have tried to force you since last March to get this through the Court. There was no excuse for you not getting it through last April. You had all the evidence and more than you needed, it was all on my side. And out of all this evidence there was not one word in my favor entered in Superior Court.

I paid you Five Hundred Dollars to put this through this Court. I hold your receipt which is a contract. I must know this week what you are doing or I am going to take action. I am not going to wait till it is too late.

Mr. Braun, I hate to talk to you like this, but in my opinion it is men who abuse our laws that are responsible for my niece's death. This must be settled this week or I am going to Washington. I can't wait till it is too late.

How long do we have to get it in?

Please let me know at once what you are doing. Don't go down with this bunch. If this has been done unbeknowance to you, you will have to protect yourself. Don't wait till it is too late. I am NOT. Please read enclosed paper.

Respectfully yours,
Edith Nycum

P. S. Mr. Braun, please go back through your files and read my letters to you; how I kept after you to rush this through. If you do not have my letters I can send you a copy of them. I have all of them.

(5) December 23, 1944, I received a copy of the petition for re-hearing Attorney Braun filed at Superior Court. (read Petition on record pages 27-31, also entered the testimony following page 31). January 14, 1945, Attorney Braun died. January 19, 1945 we went to Pittsburgh to get our files on this case. Attorney Wagner refused to give us our papers. We heard his secretary tell Attorney Safier on the phone that Mr. Wagner had taken all the papers out he wanted, and they had sent them over, he was to go through them and take out what he wanted. When they were through with them there was nothing left we could use. The O. P. A. form was there minus the affidavit. Attorney Safier said he had filed it at the Superior Court; but he did not.

(6) January 23, 1945, petitioner retained Attorney Louis McCabe of Philadelphia who filed her appeal to the Supreme Court of Pennsylvania and supplement to Attorney Braun's petition.

(7) April 10, 1945 petitioner went to see Attorney Walter Maloney, Investment Building, Washing-

ton, D. C., to appeal her case to the Supreme Court of the United States. He said he would take the appeal but refused to accept a retainer. He ordered up the record from the Supreme Court of Pennsylvania, informing them he and his associates have been employed to take an appeal to the United States Supreme Court in the case of City of Altoona vs. Edith Nycum. On the same day they ordered the record from Quarter Sessions Court also stating petitioner had employed them to take an appeal to the United States Supreme Court. Then they ordered up the Police Court record. May 14, 1945 she took it to Washington; after using up five weeks of her appeal time, these attorneys told your petitioner they could not take her appeal.

(8) May 24, 1945, we retained Robert McNeill, Bowen Building, Washington, D. C. for a fee of One Thousand Dollars; giving him Five Hundred Dollars as a retainer. He was to appeal this as a Civil Rights case. We gave him the certified record of the Supreme Court of Pennsylvania. We also gave him the records the other attorneys ordered up from Quarter Sessions Court and City Hall and all evidence pertaining to this case. Our appeal time expired June 19th. June 7th the record had not been taken to the Court to be printed. He said he would get it in today. Attorney Blaunstine, who was associated with him on this case came in, he told him to get the record ready. Attorney Blaunstine separated the certified record of the Supreme Court of Pennsylvania and inserted the Supplemental Decree and other papers that came up from the Trial Court. We knew the two records could not be mixed. Miss Nycum said, "You can't put that Supplemental Decree in that Supreme Court record, if you must use it you will have to put it in as coming up from the Trial Court." Mrs. Phillips said that Supplemental Decree

is not a part of that Supreme Court record. Attorney Blaunstine said "it will be now, we are making it a part." Attorney McNeill took it to the Supreme Court to be printed. We came home and wrote to the Supreme Court Clerk and asked him what record he used in his Court? Could any record except the certified record that came up from the Court of last appeals, or could papers from a lower Court record be added. He replied that the only record that could be used would be the record that came up from the Supreme Court of the State. June 19th, we went to the Supreme Court office and asked the Clerk if they had printed the record, he said we can't print that record in the shape its in. I said it was all right when we gave it to the attorney. We went over to Attorney McNeill's office. Attorney McNeill and Blaunstine came in with the record, stating we cannot use this record, I will order up another and pay for it myself. I said it can be separated and put together as the pages are numbered and indexed. (The Trial Court records were Photostatic). These attorneys had put more than three-fourths of the Trial Court record into the Certified Supreme Court record. We separated the two records and the attorneys took it back to be printed. June 26th we went to the United State Supreme Court office and asked if the record was printed yet? Mr. Cullinan, the clerk, said he was not going to print pages two to ten of my brief, which is a part of the certified record from the Supreme Court of Pennsylvania (R. 2 to 10). I demanded my rights to have this record printed from cover to cover. He said we do not print briefs. We still insisted he print it as it was essential in my defense. He said if I prove in a law book we do not print briefs, will you be satisfied? I said yes. He showed me in a law book that "a brief in itself did not set up a Federal Question." He

wanted to leave in the part of my brief, that contained a copy of the Trial Court record (R. 10 to 18). We went to Attorney McNeill's office and demanded the record be printed from cover to cover, or we would appeal to the Justices. At the clerk's request Attorney McNeill wrote a letter taking the responsibility of printing this part of the record.

July 1, 1945, the record was still not printed. We told Attorney McNeill he would have to get the record printed, we had gave him Three Hundred Dollars for that purpose, and we were not leaving Washington until this was done. The afternoon of July 3rd, the record was finished. We were to meet in Attorney McNeill's office July 4th and write the petition, but after the record was delivered he said he had to go to the country. We feared Attorney McNeill now having the record in his possession would file the petition he had drew up to support the illegal papers he had inserted into the certified record, and we forbid him to use it. But he still insisted that was the one he would use. The petition could not be used unless the illegal papers remained in the certified record, especially the Supplemental Decree. We sent Attorney McNeill a telegram to withdraw his appearance as my attorney at Supreme Court. July 5th, I received a letter from Attorney McNeill stating he would not withdraw his appearance as my attorney at the United States Supreme Court until I gave him Five Hundred Dollars, the balance of the One Thousand Dollars we contracted for. We sent him the Five Hundred Dollars, that made One Thousand Dollars fee and Three Hundred Dollars for printing. We retained him to appeal this case as a Civil Rights case, later we found he had entered it as a Writ of Certiorari. The record of the Court of last appeal does not contain the Supplemental Decree, that the Superior Court

of Pennsylvania based its opinion on. We feel this is why Attorney McNeill separated the record of the Court of last appeal and tried to insert this Supplemental Decree. This and other things is why we did not dare trust Attorney McNeill, and had to write our own petition as best we could. And with this experience with attorneys we were afraid to trust one further. We retained Attorney McNeill May 24, 1945 and gave him the certified record from the Supreme Court of Pennsylvania with the history of the case. With numerous trips to Washington and much arguing this record was not printed till July 3, 1945 and July 11, 1945 when we paid him his full fee of One Thousand Dollars he had no finished petition or brief to show us, and our extension of time expired on July 19, 1945, and this is why your petitioner is before your Honorable Court without an attorney.

(1) Petitioner was denied her Federal Rights of Freedom of the Press as guaranteed her under the Amendments I and XIV of the Constitution of the United States.

(2) Petitioner has been denied the equal protection of the law as guaranteed her under Amendment XIV of the Constitution of the United States.

(3) Petitioner has been denied to be confronted with the witnesses against her as guaranteed her under Amendment VI of the Constitution of the United States.

(4) Petitioner was denied the assistance of counsel for her defense as guaranteed her under Amendment VI of the Constitution of the United States.

(5) Petitioner was denied due process of law as

guaranteed her under Amendment V of the Constitution of the United States.

(6) Petitioner was subjected to triple jeopardy which she is protected from under Amendment V of the Constitution of the United States.

(7) Petitioner has been denied a speedy, imparital and public trial, her Constitutional Rights guaranteed her under Amendment VI of the Constitution of the United States. And she claims its high time the Supreme Court of the United States investigate these un-just, un-constitutional acts of these Pennsylvania courts.

Wherefore it is respectfully prayed that this petition for reargument be allowed and that the writ be granted to review the judgment and opinion of the Supreme Court of Pennsylvania, and your petitioner will ever pray.

EDITH NYCUM
Petitioner,
Altoona, Pennsylvania

COMMONWEALTH OF Penna.
COUNTY OF Blair

Before me, the undersigned authority, personally appeared Edith Nycum who being duly sworn according to law, deposes and says that she did not see the Supplemental Decree in the Prothonotary of the Superior Courts office, her two sisters did. All the other facts set forth in the foregoing petition for reargument of her own knowledge are true and correct, and that the same is not instituted for delay but that the ends of Justice may be met.

(Signed) Edith Nycum

Sworn to and subscribed before me this 26th
day of October, 1945.

(Signed) Edith Engler
Notary Public

My commission expires 3/18/49

TRANSCRIPT OF THE LETTERING OF SAID SIGNS

Sign No. 1

"BELIEVE IT OR NOT. This happened in America; a country that boasts to the world of its Christianity—Civilization, Constitutional Rights, and Justice for all. This would give Hitler a laugh. The fiend who tortured and murdered this girl is being protected by the men who are asking your vote for re-election. Let's vote for men who will obey and enforce our laws. Forget party—vote for safety of your loved ones. Where else on this earth could a fiend get away with a murder like this. Why did Mayor Rhodes exonerate him?"

Sign No. 2

"VOTERS OF ALTOONA AND BLAIR CO., THINK TWICE. Why does an ex-soldier, taxpayer, a man satisfied with his own wife have to beg for justice for his murdered child. These City and County Officials, paid by the taxpayer to protect their rights have denied this girl the rights of all citizens of the U. S. When this body was raised for an autopsy at the families' expense; proved murder and cover-up. This child was tied and gagged; the elbows, and skin rubbed off inside of ankles shows struggle before lungs split

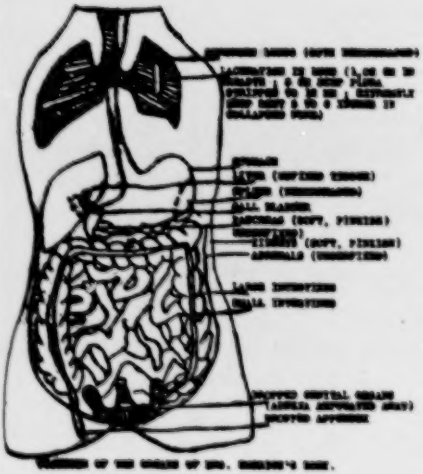
and back broken. Does the fiend who murdered this child know so much on our officials—high and low—that they must protect him to the extent of calling this brutal murder a suicide—J. Edgar Hoover calls this murder."

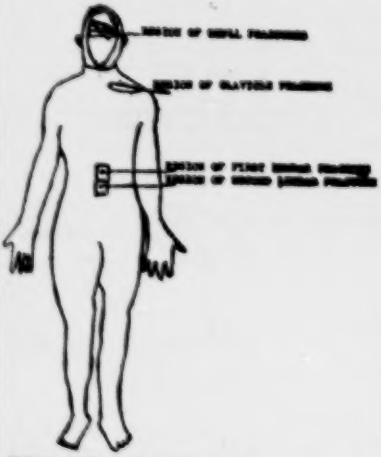
Sign No. 3

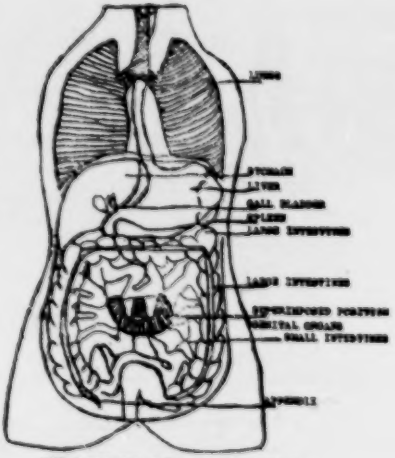
"VOTERS, the parents of this murdered child are asking you not to vote for any man who is not free to state publicly that he will positively prosecute this brutal murder; is not free to prosecute others. Here are just a few things paid for by the taxpayer. Would you call this Justice? D. A.'s office and City Hall have two different sets of pictures of victim's bedroom, one in perfect order, bed made up as many saw it day of crime. Other in disorder, bed as tho' two people slept in it. Clothes not victims on bed. Parent's called by police before window glass was broken. Told daughter in Hosp. had jumped thro' window. D. A. said we called him before 3 A. M. He looked at clock. 1 6/10 Mi. to Hosp. out (victim dead) back before we called D. A. Death certif. stated died at 3:05 A. M. Our law states lived 20 Min. in Hosp. With both lungs crushed and split we want to prove that anyone that seen her alive, saw her killed, after she had been gagged, tied, beat and tortured for hours.

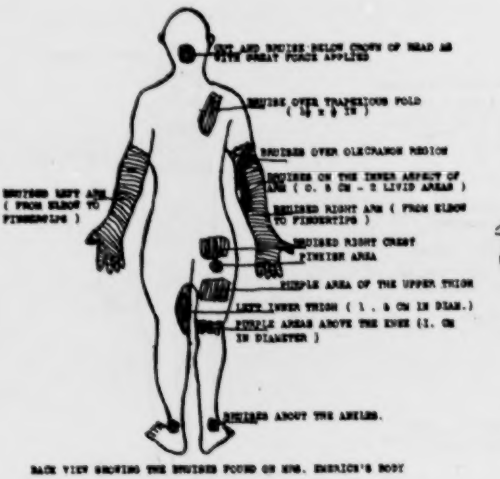
Coroner refused inquest and so much evidence visable. See chart of injuries in window below. Buried without Drs. sig. on death certif. and fake autopsy. Two policemen took large bundle from Apt. morning of crime. Our law said local Dr. tested clothes for blood. Dr. said he did not. Our law refused to get bloody mattress that Emerick

was allowed to exchange for another. Undertaker Saleme covered and lied about her injuries. Attorney S. H. Jubelirer took $250.00 from this family. $150.00 was for tests he never made one, or gave one cent back. This child never rated a hearing of any kind, but a Pig beat to death did. If out State laws can deny this child a fair trial and Wash. does not interfere, then we have no Justice. Any city or county official can invite Hoover to settle this, as Wash. is the only fair way now. Voters correct conditions here, here. Protect the prin. your sons are fighting for." (R. 53-54.)



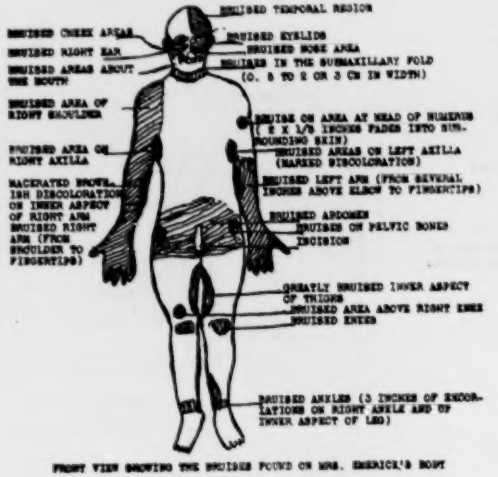






BACK VIEW SHOWING THE BRUISES FOUND ON MRS. EMERICK'S BODY

DISCOLORATED AREAS FOUND IN MRS. EMERICK'S BODY



FRONT VIEW SHOWING THE BRUISES FOUND ON MRS. EMERICK'S BODY

BRUISES ON THE INNER ASPECT OF LEFT THIGH OF MRS. EMERICK

BRUISES ON THE INNER ASPECT OF RIGHT THIGH OF MRS. EMERICK.

This is the story an autopsy told performed by Dr. Lorenza of Punxsutawney, Pa., Dr. Brecken of Pittsburgh, Pa., and Dr. Hurlick of Phillipsburg, Pa. This autopsy was paid for by this victim's family. After public requests in the papers for a coroner's inquest, and many appeals to the City, County and State authorities for a coroner's inquest, we were forced to hang these signs to clear this victim's name of suicide.

SOCIAL IMPORTANCE OF THE QUESTIONS INVOLVED.

The Pennsylvania Supreme Court is the highest Court of the State. Its duty is to correct the errors of the Courts below. To uphold the principles of a Democracy its service must be impartial and just, regardless of who, or how many are involved. Every individual's rights should be sacred and protected at any cost and by all Courts. If we are to keep faith in the protection of our freedom and justice that has just cost the lives of one million boys, we will have to find justice in our Courts. What can the reaction of a returned Soldier be who has answered the call to protect Democracy and what it stands for—"Justice for all," to find a family handing out papers on the streets telling of being denied the protection of our laws, telling of the torture murder of an eighteen year old girl, a soldier's daughter and a soldier's sister, how she was denied due process and equal protection of the law; and how the law in all its power was used to persecute this murdered girl's family and protect the man who murdered her. If our Courts refuse to prosecute murderers and our highest Court in the State hold your petitioner guilty without a hearing on a Court record that contains only data filed by her attorneys and herself in her defense, in spite of the fact a Writ of Certiorari was served on the Trial Court, will prove that Court unjust, unconstitutional and Un-American. The Supreme Court of Pennsylvania's decision can only encourage gangsterism, murderers and criminals, and breed contempt in real Americans for our Courts; destroy faith in our government and destroy Democracy. We are not fighting solely for ourselves now; we are fighting for the principles our government was built on, equal rights

and justice for all. And we can no more think of ever quitting than our soldiers would think of quitting before the war was won. Contrary to all reason and to all our guaranteed Constitutional Rights of the protection of our laws, your petitioner has never won a decision in our Courts; but we have won every decision on the streets with pamphlets and banners. Is this our only means of finding Justice? The transcript of record before your Honorable Court show no Court record filed, no brief filed for Appellee, no appearance for Appellee. But consists only of records, briefs, petitions and evidence filed in your petitioner's defense. Your petitioner has fought this case from the Trial Court to the highest Court in America and her fight has been only with the Courts, Prothonotarys and Clerks, whose service should be neutral, and with her own attorneys who she paid to defend her. She has paid for the service of eleven attorneys and has been two years less one month getting before your Honorable Court, thus denying her a speedy, impartial, public trial and the assistance of an attorney in her defense, these rights are guaranteed petitioner in the Constitution of the United States.

Judge Patterson of the Trial Court destroyed the official record of testimony; and five months after a Writ of Certiorari was served on his Court he made a Supplemental Decree in which he falsely states several witnesses for the City of Altoona testified. Not one witness for the City of Altoona testified before the Trial Court Judge. Judge Patterson found your petitioner guilty without a witness testifying against her. The Superior Court speaking through Judge Keller, without a hearing, affirmed this decision, going off record basing his opinion on this unlawfully made Supplemental Decree, and ignoring the record in his Court, and the Supreme Court of Pennsylvania, the highest

Court in the State affirming this unjust, unconstitutional decision can only encourage crime.

Your petitioner claims the Supreme Court of Pennsylvania is unjust, unconstitutional and un-American. The Supreme Court of Pennsylvania's decision would destroy faith in the laws of our country. Such a decision would deny to the citizens the privileges and immunities guaranteed by the United States Constitution.

Respectfully submitted,

EDITH NYCUM,

Altoona, Pennsylvania

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 275.

EDITH NYCUM, *Petitioner*

vs.

CITY OF ALTOONA, PENNSYLVANIA, *Respondent*

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND PETITION FOR SECOND REHEARING.

EDITH NYCUM, *Petitioner*,
1210 13th Avenue,
Altoona, Pennsylvania.

On petition for writ of certiorari to the SUPREME COURT of

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EXHIBITS

TABLE OF CASES CITED

LAW

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 275

EDITH NYCUM,
Petitioner,

vs.

CITY OF ALTOONA, PENNSYLVANIA,
Respondent.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING

Come, the petitioner, and respectfully move this Court for leave to file a second Petition for Rehearing, within the time allowed, which motion is based upon the following grounds:

1. That petitioner is a citizen of the United States, and a resident of the State of Pennsylvania. The State of Pennsylvania cannot abridge her federal and constitutional rights of due process and equal protection of the law, in their effort to deprive her of her Constitutional Right of Freedom of Press.

2. The question before this court, is, can the Pennsylvania Courts deprive petitioner of her Constitutional Right of Freedom of Press, said Pennsylvania authorities had so much personal interest as to cause them to

be over zealous in their effort to deprive petitioner of Freedom of the Press; that they created many federal questions, which they also deprived her of. Your petitioner did not know the extent to which her attorneys had entered into this gross fraud to deprive her of her Constitutional Rights, until very recently, as petitioner will show your court, by the Supplemental Decree and other annexed papers.

> In *Lyons* v. *State of Oklahoma*, 322 U. S. 596, p. 1213. This court held: "The Fourteeneh Amendment is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of "that fundamental fairness essential to the very concept of justice", and in a way that "necessarily prevent(s) a fair trial".
>
> In *Hill* v. *Texas*, 316 U. S. 400, p. 1159. This court held: "A State may not impose upon one charged with crime a discrimination in its trial precedure which the constitution and an act of Congress passed pursuant thereto alike forbid. The Supreme Court is not at liberty to grant or withhold the benefits of equal protection of the laws merely as court may deem the defendant innocent or guilty. "Equal protection of the laws" is not an abstract right, but is a command which the State must respect".

3. Petitioners arrest was ordered by one, Mayor Chas. Rhodes, R. p. 13, 32, Mayor of the City of Altoona, Pennsylvania; for not getting a permit R. p. *II*; to hang cloth signs, hung by Mrs. Phillips, on a house Mrs. Phillips has been in control of since 1928, R. p. 42–43. These signs tell of the torture murder of petitioner's niece, and how the Pennsylvania authorities refused to do the ministerial duty of their office, to hold a Coroners inquest, and their effort to conceal the murder to protect the man who murdered said niece R. p. 53–54. Mayor Rhodes name appears on these signs R. p. 53. It is conceded these signs, and articles that run in a local paper, telling of the refusal to prosecute the murderer and the persecution of said niece's family, defeated this Pennsylvania Mayor for re-election.

> In *West Virginia State Board of Education* v. *Barnett*, 319 U. S. 624, p. 1185. This court held: "The very purpose of a Bill of Rights was to withdraw

certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

4. The prosecuting attorney, City Solicitor Samuel Jubelirers name appears on said signs as taking two hundred and fifty dollars from petitioner; one hundred dollars was a retainer, R. p. 54, he never served her and he was prosecuting her. Said money was to prosecute a City policeman. He being City Solicitor, he could not prosecute a City employee.

In *Buchalter* v. *People of State of New York*, 319 U. S. 427, p. 1129. This court held: "The "due process of law" clause of Fourteenth Amendment requires that action by State through any of its agencies must be consistent with fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as the "law of the land." U. S. C. A. Const. Amend. 14. Where fundamental principles of liberty and justice have been disregarded in criminal trials in a State court, United States Supreme Court does not hesitate to exercise its jurisdiction to enforce guaranty of the Fourteenth Amendment. U. S. C. A. Const. Amend. 14."

5. Judge Patterson of the Pennsylvania Trial Court, was well aware of the murder the signs tell of. Petitioner and Mrs. Phillips went to said Judge's office to petition said Judge to order an inquest into said niece's death. They left the charts of injuries (as before your court, in petitioners petition for rehearing) in said Judge's office for several months, with the autopsy to back them; and other data on said niece's murder. A committee from the Blair County Ministerial Association petitioned Judge Patterson, of the Trial Court, to hold a Grand Jury Investigation into said niece's death. Judge Patterson is one of the officials the signs tell of R. p. 53-54. The Supplemental Decree shows the Judges

hands unclean and that Petitioners attorneys went in with their eyes open.

Is this the answer to so many unsolved murders in the State of Pennsylvania?

> In *Jones* v. *Opelika*, 319 U. S. 105, p. 892. This court held: "The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. It is strenuously urged that the Constitution denies a city the right to control the expression of men's minds and the right of men to win others to their views. But the court is not divided on this proposition. No one disputes it. All members of the court are equally familiar with the history that led to the adoption of the Bill of Rights and are equally zealous to enforce the constitutional protecion of the free play of the human spirit."

6. The record as before your court shows, the only question to be decided by these Pennsylvania Courts is the Constitutional question of Freedom of the Press. Must petitioner get a permit to hang cloth signs which were hung by Mrs. Phillips, on a house controlled by Mrs. Phillips. Said signs tell of the torture murder of petitioner's niece and the denial of a Coroners inquest. Said signs constitute a public petition to the Pennsylvania Officials to perform the mandatory duty of their office. Transcript of lettering on signs R. p. 53-54. Picture of signs R. p. 54A–54B.

> In *Hill* v. *Smith*, 260 U. S. 592, 594. This court held: "A federal question which was treated as open, and decided, by the State Supreme Court, will be reviewed here without inquiring whether its federal character was adequately called to the attention of the trial State court. A question of burden of proof may amount to a federal question when intimately involved substantive rights under the federal statute."
>
> In *Murdock* v. *Memphis*, 20 Wall 590, 22 L. Ed. 443. This court held: "But when it appears that

the federal question was decided erroneously against the plaintiff in error, we must reverse the case undoubtedly, if there are not other issues decided in it than that."

7. Petitioner claims her right to an impartial trial was violated. She claims this was done to suppress freedom of press in said authorities' effort to remove from the public eye the vehicle of information, R. p. 54A–54B, which tell of these Pennsylvania Officials refusal to perform the sworn ministerial duty of their office of not holding a Coroners inquest into the torture murder of her niece, R. p. 53–54. Petitioner claims this hearing was a gross fraud and repungnant to the Constitution.

In *Snowden* v. *Hughes*, 321 U. S. I. p. 400. This court held: "Section 43 provides that: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected, any citizen of the United States or other person * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law * * * for redress." Section 47 (3), so far as now relevant, gives an action for damages to any person" injured in his person or property, or deprived of having, and exercising any right or privilege of a citizen of the United States," by reason of a conspiracy of two or more persons entered into "for the purpose of depriving * * * any person * * * of the equal protection of the laws, or of equal privileges and immunities under the laws."

In *Tumey* v. *State of Ohio*, 273 U. S. 510 p. 441, 445. This court held: "But it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." "The plea was not guilty and he was convicted. No matter what the evidence was against him, he had the right to have an impartial judge."

8. The record as before your court shows: before this Pennsylvania Trial Court, Lieutenant of Police, Harry

Carey, read the police docket that he ordered petitioner's arrest on November 20, 1943, by order of Mayor Rhodes, R. p. 32. Lieutenant Carey is officer in charge from 4 p. m. until midnight. This arrest would have had to been the arrest at 10:20 p. m. November 20, 1943; the second arrest that day. This arrest does not show on the docket. See photostatic copy of docket on page 27 of this petition. The first arrest November 20, 1943, was at 1:30 p. m., by order of Lieutenant Meehan, officer in charge from 8 a. m. to 4 p. m. This is the only arrest showing on the docket for November 20, 1943. Docket shows this arrest is in full force and order against petitioner, copy of docket page 27. This docket does not show that petitioner was arrested twice on November 20, 1943; locked in jail ten hours and all property bail refused.

In *Sibbach* v *Wilson & Co., Inc.*, 312 U. S. I, 655, p. 422. This court held: "The statute authorizing Supreme Court to prescribe civil procedure rules is restricted in its operation to matters of pleading and court practice and procedure. 28 U. S. C. A. Sec. 723b, 723c."

In *Hines* v. *Davidowitz*, 312 U. S. 52, p. 399. This court held: "The "equal protection of the laws" is a pledge of the protection of equal laws."

In *Strauder* v. *West Virginia*, 100 U. S. 303, p. 307. This court held: "It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

9. Petitioner who aimed to obey the laws of God and man; who never drank intoxicating beverages, smoked cigarettes or frequented night clubs and no one can truthfully say aught against her reputation; was taken from a sick bed and locked in a common jail. This endangered her life, subjecting her to mental anguish of fear and dispair, and created a jail record for her, impairing her health and damaging her reputation.

In *McNabb* v. *United States*, 318 U. S. 332, p. 614. This court held: "Experience has therefore coun-

seled that safeguards must be provided against the dangers of the overzealous as well as the despotic."

In *ex parte Quirin*, 317 U. S. I, p. 10. This court held: "Congress and the President, like the courts, possess no power not derived from the Constitution."

In *Garrett* v. *Moore-McCormack*, 317 U. S. 239, p. 251. This court held: "The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates."

10. The record as before your court shows petitioner's attorney Warfel refused to present her evidence that was proof positive she was not physically able to make or hang the signs, and was not in control of the house they hang on R. p. 42; contrary to petitioner's will he pleaded her guilty of not getting a permit for hanging the signs, R. p. 40. Petitioner arose several times and said to Judge Patterson; Your Honor: "I want on the stand to defend myself." The Judge said: "That is up to your attorney." Petitioner arose in court and demanded her Constitutional Rights to defend herself, and personally submitted this said evidence to the Judge; who examined and considered said evidence, R. p. 42; and the record shows he did not file said evidence as Exhibits, R. p. 32. Petitioner claims said action of her attorney constitute contempt of court, and malpractice; as this is abuse of the function of his office and obstructed the administration of justice.

In *Cook* v. *United States*, 267 U. S. 517, p. 395. This court held: "The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice, and in maintaining the authority and dignity of the court, is most important and indispensable.'

In *Clark* v. *United States*, 289 U. S. I, p. 468. This court held: "We must give heed to all the circumstances, and of these not the least important is the relation to the court of the one charged as a contemnor. Deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his office.

In *Nye* v. *United States*, 313 U. S. 33, p. 810. This court held: "Under the statute providing that the

power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice."

11. The record as before your court shows the only representative for the prosecution at Trial Court was the City Solicitor, Samuel Jubelirer, who was not present at the police court hearing, which is a court of no record. It shows he made false statements, which if true, would have been hearsay, R. p. 40, 42, 35.

In *Leadville Coal Company* v. *McCreery*, 141 U S. 478, 479. This court held: "So as such affadavits rest on hearsay testimony, it is enough to say that they prove nothing."

12. Petitioner asserts that the prosecuting attorney, by false statements in his address, obtsructed the administration of justice, and was so unfair as to deprive the trial of the essential quality of an impartial inquiry into her guilt. Petitioner claims said action, of said attorney, constitutes contempt of court.

In *Clark* v. *Unied States*, 289 U. S. I. p. 468. This court held: "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is * * the characteristic upon which the power to punish for contempt must rest."

In *Bridges* v. *State of California*, 314 U. S. 253 p. 195. This court held: "Congress proclaiming in statute expressly captioned "An Act declaratory of the law concerning contempts of court, "that the power of federal courts to inflict summary punishment for contempt" shall not be construed to extend to any cases except the misbehavior of * * * persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice."

13. This Pennsylvania Court was not a court of justice. It was a persecuted woman with the aid of her two sisters, trying to defend herself from a prejudiced Judge, City Solicitor, and the attorney she paid to defend her, whose actions were so unfair as to deprive the

trial of the essential quality of an impartial inquiry into her guilt. Judge Patterson was not interested if there had been a crime committed. His only concern was to get the signs down, R. p. 43. Could the reason be he was one of the Officials the signs tell of, R. p. 53. The City Solicitor's name appears on these signs, as taking two hundred and fifty dollars from petitioner, and never defended her, R. p. 54.

In *Powell* v. *State of Alabama*, 287 U. S. 45 p. 58. This court held: "However guilty defendants, upon due inquiry, might prove to have been, they were, until convicted, persumed to be innocent. It was the duty of the court having their cases in charge to see that they were denied no necessary incident of a fair trial," p. 61. "The question, however, which it is our duty, and within our power, to decide is whether the denial of the assistance of counsel contravenes the due process clause of the Fourteenth Amendment to the Federal Constitution. The words of Webster, so often quoted, that by "the law of the land" is intended "a law which hears before it condemns" have been repeated in varying forms of expression in a multitude of decisions."

In *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, p. 136. This court held: "When a state official, acting under color of State authority, invades, in the course of his duties, a private right secured by the Federal Constitution, that right is violated, even if the State officer not only exceeded his authority but disregarded special commands of the State law."

14. The record as before this court shows petitioner was arrested, convicted and fined seventy-five dollars, R. p. 4, on perjured evidence at Police Court hearing, R. p. 35. Rearrested on the same charges, taken from a sick bed and locked in a common jail for ten hours, and all property bail refused. R. p. 35. This subjected petitioner to double jeopardy.

In *Grafton* v. *United States*, 206 U. S. 333, p. 350. This court held: "If, therefore, a person be tried for an offense in a tribunal deriving its jurisdiction and authority from the United States and is acquitted or convicted he cannot again be tried for the same offense in another tribunal deriving its jurisdiction and authority from the United States, a different

interpretation finds no sanction in the article of war." Mr. Bishop, in his treatise on criminal law (7th Ed.) 1050, says: "It is not necessary to establish the defense 'autrefois acquit' or 'convict that the offense in each indictment should be the same in name If the transaction is the same, or if each rests upon the same facts between the same parties it is sufficient to make good the defense."

In *Commonwealth* v. *Ruby*, 12 Pick 503, the court said: "Thus an acquittal on an indictment for murder will be a good bar to an indictment for manslaughter, and e converso, an acquittal on a indictment for manslaughter will be a bar to a prosecution for murder.

Petitioner therefore, upon the matters above stated, and the matters set forth in the annexed petition for a rehearing, respectfully pray this court to grant the peition for rehearing and to grant the application for a Writ of Certiorari.

Petitioner regrets the length of the motion for leave and of the second petition for rehearing. The great importance of the questions involved and the evidence of conspiracy to commit gross fraud to obstruct the process of Justice and make a mock of our Courts, make the Documents slightly longer than petitioner wished.

The petitioner herewith submits along with this motion for leave to file same a copy of the second petition for a rehearing, and have filed the originals of the same in this cause with the Clerk of the Court.

Respectfully submitted,

EDITH NYCUM, *Petitioner*,
1210 13th Avenue,
Altoona, Pennsylvania.

CERTIFICATE OF PETITIONER

Hereby certify that she means no disrespect to this Court nor any member thereof. She is sincere in the belief that a serious and grave error has been committed, and she further certify that in her opinion this second petition for rehearing is filed, not for delay but that Justice may be done.

EDYTH NYCUM, *Petitioner*.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 275

EDITH NYCUM, *Petitioner*

vs.

CITY OF ALTOONA, PENNSYLVANIA, *Respondent*

SECOND PETITION FOR A REHEARING

Petitioner has prepared this second petition for a rehearing; the same to be treated as the original, and to be attached to, and printed with the motion for leave, and to avoid repetitions as far as possible. The petitioner requests that the above motion be treated as a part of this second petition for a rehearing as though set out in full herein; and for the same reason petitioner requests that her first petition for a rehearing be treated as a part hereof as giving the basic reasons for the granting of the petition for Certiorari.

1. February 9, 1944, petitioner retained attorney Robert Braun, Pittsburgh, Pa., for the sum of five hundred dollars to appeal this as a civil rights case to the Superior Court of Pennsylvania. She delivered to him a transcript of testimony of hearing at trial court; taken by a Notary Public stenographer in short hand and transcribed, and an affadavit to verity of same. Also history of the case. On account of ill health, Attorney Braun retained Attorney Samuel Wagner; Berger Bldg. Pittsburgh, Pa., an Appellate lawyer and Attorney Milton Safier, Pittsburgh, Pa., to take petitioner's appeal to Pennsylvania Superior Court which was filed February

25, 1944. Certiorari was served on Trial Court March 17, 1944. Record sent up March 20, 1944. This transferred all jurisdiction to the Appellate Court. When an Appeal is perfected, all jurisdiction over the case is transferred to the Appellat Court.

> 63—*Midland Terminal Ry. Co.* v. *Warinner*, 294 Fed. 185, Ct. *Aspen Mining and Smelting Co.* v. *Billings* 150 U. S. 31, 14S. Ct. 4, 37 L. Ed. 986. "And the trial Court can make no further orders in the case. (64)."

2. July 31, 1944, more than four months after all jurisdiction had been removed from the Trial Court to the Appellate Court; petitioner claims her attorneys, Wagner and Safier, entered into a conspiracy with Judge Patterson to commit gross fraud to deprive her of her Constitutional Rights of Due Process and Equal Protection of the Law, in the making of this Supplemental Decree, page 23 of this petition, which is made up of false statements; and she claims this is trifling with the court and making its process a mockery. She claims it was done wilfully to obstruct the administration of Justice. This Supplemental Decree states: "Several witnesses for the City of Altoona testified." Not one witness for the City of Altoona testified. R. p. 32–43. It states: "No request for the testimony." Petitioner requested a copy of testimony before, and after the hearing, R. p. 28. It states: "the signs are advertisements." These signs are a public petition, to any public official in authority in America, to do the mandatory duty of their office to hold a Coroners inquest for this murdered girl, and to bring the fiend to justice who murdered her, for the safety of the public, R. p. 53–54. This Supplemental Decree states: "Your petitioner or counsel did not raise the question that she was not responsible for hanging of the signs until after all the hearing of testimony." Answer to second question: "I didn't erect the signs," R p. 33. Petitioner's attorney refused to use her evidence for her defense, or allow her to use it. She had to demand her Constitutional Rights to defend herself, R. p. 42. This Supplemental Decree is not a part of the

transcript of record as coming up from the Supreme Court of Pennsylvania; as before your court. The Superior Court of Pennsylvania bases their opinion on this Supplemental Decree, R. p. 49. This Pennsylvania Trial Court Judge destroyed the official record of the minutes of the trial, R. p. 29; then falsified the record in his Court by making this Supplemental Decree. Petitioner claims this Supplemental Decree was made to obstruct the course of Justice and this constitutes malfeasance. She also claims that these attorneys are guilty of contempt of court and malpractice. "In Perm. Ed. Words and Phrases, Vol. 26, p. 139. Judge, who corrects minutes of Court so as to reflect state of facts known to him to be false, is guilty of such misconduct in office as to constitute "Malfeasance" included in term "high crimes and misdemeanors in office" for which district judge may be impeached or removed from office under Const. 1921, Art. 9, 1, 5."

In *Miller* v. *United States*, 317 U S. 192, 601, p. 191. This court held: "Counsel in this case could, therefore, have prepared and presented to the trial judge, as was his duty, a bill of exceptions so prepared, and it would then have become the duty of the trial judge to approve it, if accurate, or, if not, to assist in making it accurately reflect the trial proceedings. We are unwilling to hold that the petitioner is foreclosed from obtaining a bill in the circumstances of this case. Petitioner repeatedly insisted that counsel procure a proper record on appeal to present the question of the sufficiency of the evidence to sustain his conviction. The petitioner did everything that lay within his power to obtain such a proper record, and we think he should not be penalized for the failure of his appointed counsel to take the necessary measures, if the power exists to afford him a hearing on the point he deems material."

In *Clark* v. *United States*, 289 U. S. 1, p. 468. This court held: "An Obstruction to the performance of judicial duty resulting from an act done in the presence of the court is * * * the characteristic upon which the power to punish for contempt must rest." "We must give heed to all the circumstances, and of these not the least important is the relation to the court of the one charge as a

contemnor. Deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his office."

In *Bridges* v. *State of California*, 314 U. S. 253, p. 195. This court held: "Congress proclaiming in a statute expressly captioned "An Act declaratory of the law concerning contempts of court, that the power of federal courts to inflict summary punishment for contempt" shall not be construed to extend to any cases except the misbehaviour of * * * persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice * * *."

3. The Pennsylvania Superior Court, speaking through Judge Keller, went off record, basing their opinion on this Supplemental Decree, p. 23. This Supplemental Decree is gross fraud; composed of lies and signed by Judge Patterson of Blair County Court of Pennsylvania, and is on record in his court. Petitioner claims this Supplemental Decree was made to cover up said Judge's un-constitutional actions in her case and the fraud perpetrated against her by said Judge, City Solicitor Samuel Jubelirer, and attorney Frank Warfel, who she paid to defend her.

In *United States* v. *Classic*, 313 U. S. 299, p. 1032. This court held: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of State law, is action taken "under color of law" within statute making it a penal offense for anyone who, acting under color of law, willfully subjects or causes to be subjected any inhabitant of any state to the deprivation of any rights, privileges, or immunities secured or protected by the Federal Constitution and laws. Cr. Code Sec. 20, 18 U. S. C. A. Sec. 52."

4. About September 17, 1944, petitioner's attorney Braun told her, Judge Patterson had made a document, that was worse than what he done before, (meaning the trial) September 18, 1944, petitioner received a copy of the Supplemental Decree from the Prothonotary. Copy on p. 23. Compare this with transcript of testimony in record as before your court, R. p. 32–43.

In *ex parte Virginia*, 100 U. S. 339, p. 347. This court held: "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The Constitutional provisions, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws."

In *Glasser* v. *United States*, 315, U. S. 60, p. 464, 465, 467 this court held: "The guarantees of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the right granted by the Sixth Amendment to an accused in a criminal proceeding in a Federal court "to have the Assistance of Counsel for his defence." "This is one of the safeguards * * * deemed necessary to insure fundamental human rights of life and liberty." "To preserve the protection of the Bill of Rights for hard-pressed defendants we indulge every reasonable presumption against the waiver of fundamental rights." "Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused." "The trial court should protect the right of an accused to have the assistance of counsel." "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

5. This Supplemental Decree is not a part of the record as before your court as coming up, full and complete, from the highest court in Pennsylvania and signed by the Prothonotary of said Court, and Judge Baldridge as same.

In *Smith* v. *State of Texas*, 311 U. S. 128, p. 165. This court held: "We must consider this record in the light of these important principles. The fact that the written words of state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised."

In *Mitchell* v. *United States*, 313 U. S. 80, p. 878. This court held: "It is the individual, we said, who is entitled to the equal protection of the laws,—not merely a group of individuals, or a body of persons according to their numbers."

In *Smith* v. *O'Grady*, 312 U. S. 329, p. 572. This court held: "The Federal Constitution is the 'supreme law of the land,' and the obligation to guard and enforce every right secured by that constitution rests on the state courts equally with the federal courts."

In *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, p. 679. This court held: "The clause in the Fourteenth Amendment forbidding a state to deny to any person within its jurisdiction the equal protection of the laws is a pledge of the protection of equal laws."

6. Petitioner claims the highest Court of Pennsylvania was prejudice and unfair to her. How did they know of this Supplemental Decree when it was not a part of the record as before their court? Were they conspiring with the Lower Court against petitioner? No brief; petition or appearance for Appellee filed in this Pennsylvania Court. The decision of these Pennsylvania Courts show this an act of tyranny. Justice Marion Patterson of the Supreme Court of Pennsylvania is a brother of Judge George Patterson of the Trial Court.

In *Taylor* v. *State of Mississippi*, 319 U. S. 583, p. 1202. This court held: "The evidence was contradictory and conflicting but the juries resolved the conflicts against the appellants. We must, therefore, examine the questions presented on the basis of the proofs submitted by the State."

In *Hormel* v. *Helvering*, 312 U. S. 552, p. 721. This court held: "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them."

In *Fowler* v. *Lindsey*, I. L. Ed. U. S., 414. This court held: "But it is the duty of judges to declare, and not make, the law."

In *Galloway* v. *United States*, 319 U. S. 372, p. 1086. This court held: "If the intention is to claim generally that the Amendment deprives the federal courts of power to direct a verdict for insufficiency of evidence, the short answer is the contention has been foreclosed by repeated decisions made here consistently for nearly a century. More recently the practice has been approved explicitely in the promulgation of Federal Rules of Civil Procedure of Rule 50; *Berry* v. *United States*, 312 U. S. 450, 61 S.Ct.

637, 85 L.Ed. 945. The objection therefore comes too late."

In *United States* v. *Abilene & S. Ry. Co.*, 265 U. S. 274, p. 569. This court held: "Nothing can be treated as evidence which is not introduced as such."

In *Mammoth Oil Co.* v. *United States*, 275 U. S. 13, p. 1. This court held: "Failure to produce testimoney, though not supplying facts not supported by substantive evidence, justifies inference of inability to combat facts or circumstances."

In *Smith* v. *States of Texas*, 311 U. S. 128, p. 165. This court held: "We must consider this record in the light of these important principles. The fact that the written words of a state's law hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given —not merely promised."

7. The Pennsylvania Court erred as the transcript of record as before your court shows, R. p. 32. No information, warrant or commitment. Petitioner was never arraigned; never asked if she pleaded guilty or not guilty; never indicted and went to trial without her attorney challenging the sufficiency of the indictment; or the jurisdiction of the court to hear and determine the case. No man who made the information, or witnesses appeared against her. Nothing to show that a crime had been committed; or what the crime was. Petitioner was ignorant of legal procedure; had never been before a court in her life before. She retained and paid her attorney to defend her, because he knew these things. Her attorney put her on the witness stand to defend herself and she had not been accused.

In *Glasser* v. *United States*, 315 U. S. 60, p. 467. This court held: "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

In *Hagner* v. *United States*, 285 U. S. 427, p. 418. This court held: "Test of sufficiency of indictment is whether indictment contains elements of offense intended to be charged and sufficiently apprises defendant of what he must be prepared to meet, and whether record shows accurately to what extent de-

fendant may plead former acquittal or conviction in future proceedings (18 U.S.C.A. Sec. 556).

8. The record as before your court shows only evidence for the defense of petitioner. No witnesses, and no evidence against petitioner. R. p. 32-43.

In *Snyder* v. *Commonwealth of Massachusetts*, 291 U. S. 97, p. 332. This court held: "Thus, the privilege to confront one's accusers and cross-examine them face to face is assured to a defendant by the Sixth Amendment in prosecutions in the federal courts."

In *Carter* v. *McClaughry*, 183 U. S. 374, p. 374. This court held: "That there was no evidence delivered before the court martial which tendered to show that any crime whatever had been committed by said Carter; but, on the contrary, all the evidence taken together affirmatively showed that Carter was wholly innocent of wrong-doing; "and that in imposing the sentence above set out said court martial acted beyond its jurisdiction, and said sentence was and is wholly void."

In *Herndon* v. *Lowry*, 301 U. S. 242. This court held: "The statute in that case as construed and appealed, was repugnant to the Fourteenth Amendment in that it furnished no sufficiently ascertainable standard of guilt."

In *Smith* v. *O'Grady*, 312 U. S. 329, p. 572. This court held: "The Federal Constitution is the "supreme law of the land," and the obligation to guard and enforce every right secured by that constitution rests on the state courts equally with the federal courts."

In *Tot* v. *United States*, 319 U. S. 463, p. 1244. This court held: "An "indictment" charges the defendant with action or failure to act contrary to the law's command, but it does not constitute "proof" of the commission of the offense. Proof of some sort on the part of the prosecutor is requisite to a finding of guilt."

In *Murdock* v. *Memphis* (Tenn. 1874) 20 Wall 590, 22 L.Ed., 432. This court held: "A right guaranteed by the federal authority having been denied and disregarded by the State Court, if the federal judiciary should not take the cause in its own hands to enforce that right, the laws of the United States would be a dead letter. And while, in proceeding to

enforce such rights, this court must necessarily decide the questions of state laws."

9. Petitioner was two years fighting to get this case from a city jail to the United States Supreme Court, thus robbing her of a speedy trial. And the record before your Court shows that petitioners only adversary was the attorneys she paid to defend her, the Judges and Prothonotarys; whose duty it is to see that trials are fair, impartial and unprejudice.

In *Johnson* v. *United States*, 318 U. S. 189, p. 555. This court held: "It is true that we may of our own motion notice errors to which no exception has been taken if they would "seriously affect the fairness, integrity, or public reputation of judicial proceedings."

In *Lisenba* v. *People of State of California*, 314 U. S. 219, p. 290. This court held: "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevent a fair trial."

10. May 24, 1945, petitioner retained attorney Robert McNeill, Bowen Building, Washington, D. C.; for the sum of One Thousand Dollars, to take an appeal as Civil Rights to this Court. She paid him Five Hundred Dollars as a retainer,. She delivered to him the certified transcript of record from the Supreme Court of Pennsylvania; the certified record of the Trial Court of Pennsylvania; and the certified copy of the police docket, herein printed. On or about June 7, 1945, attorney Blanstine, who was associsated with attorney Robert McNeill, at attorney McNeill's direction, separated the Supreme Court record, and inserted part of the Trial Court record, including the Supplemental Decree, and other papers. Petitioner knew these certified records should not be tampered with. Thus the telegrams and letters to the Clerk of this Court. Petitioner requests the clerk to produce these telegrams and letters for the

informaion of the Court. Attorney McNeill took this record that he had tampered with to the Clerk of this Court to be printed. Petitioner became alarmed about the mixing of the records. She inquired and learned that, no record could be used before this Court, except the one that was before the highest Court of the State. Petitioner called at the clerks office, and asked him not to print the record as attorney McNeill had delivered it, with the mixed records. The clerk said he could not print it in the shape it was in. The record was placed in its original form and printed and delivered to attorney McNeills office, July 3, 1945. Petitioner gave attorney McNeill Three Hundred Dollars for the printing of this record. On July 3, 1945 he had no finished brief or petition to show petitioner; and she felt she could not trust him further. She requested him to withdraw his appearance. He wrote petitioner he would not withdraw his appearance until she gave him the remaining Five Hundred Dollars. Petitioners transcript of record as before this court does not contain attorney Robert McNeills signature, or is his appearance entered at this Court. Petitioner paid attorney Robert McNeill One Thousand Dollars fee, and Three Hundred for the printing. Petitioner claims attorney McNeill is guilty of contempt of Court and malpractice, which deprived her of the assistance of counsel in her defense in his attempt to obstruct justice, all of which is repugnant to the Constitution of the United States. Thirteen Hundred Dollars seemed a lot of money to petitioner, after four years of constant effort, and at great expense, to clear petitioners niece's name of suicide, and bring this fiend to justice to protect other young girls. Petitioner and her family will never cease in their effort to get their murdered niece her "day in court," as well as petitioners, if our Government continues to refuse equal protection of our laws. Must every citizen of the United States know as much law as an attorney in order to claim their Constitutional Rights?

In *Bridges* v. *State of California*, 314 U. S. 252, p. 195. This court held: "Congress proclaiming in a statute expressly captioned, "An act declaratory of

the law concerning contemps of court, that the power of federal courts to inflict summary punishment for contempt "shall not be construed to extend to any cases except the misbehaviour of * * * persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice * * *."

In *Clark* v. *United States*, 289 U. S. 1, p. 468. This court held: "Deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his office."

In *Buchalter* v. *People of State of New York*, 319 U. S. 427, p. 1129. This court held: "The "due process of law" clause of Fourteenth Amendment requires that action by state through any of its agencies must be consistent with fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as the "law of the land." U.S.C.A. Const. Amend. 14. Where fundamental principles of liberty and justice have been disregarded in criminal trial in state court, United States Supreme Court does not hesitate to exercise its jurisdiction to enforce guaranty of the Fourteenth Amendment. U.S.C.A. Const. Amend. 14."

In *ex parte Virginia*, 100 U. S. 339, p. 347. This court held: "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it. But the constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons, and to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provision by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon the persons who are agents of the State, in the denial of

rights which were intended to be secured. Such is the act of March 1, 1875, and we think it was fully authorized by the Constitution." p. 348. "We do not perceive how holding an office under a State, and claiming to act for the State, can relieve the holder from obligation to obey the Constitution of the United States, or take away the power of Congress to punish his disobedience."

In *Murdock* v. *Memphis*, 20 Wall 590, 642. This court held: "But in construing the constitution in the light of the Act of 1789, we must take the whole Act into consideration, and especially the whole of the 25th Section, and by that we find that, it perports to give jurisdiction of any case in which a claim of federal right has been denied; yet, the whole Section taken together, gives jurisdiction to decide the whole case only when a claim of federal right has been wrongfully denied."

In *Nectow* v. *City of Cambridge*, 277 U. S. 183, p. 448. This court held: "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and, other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare."

Petitioner respectfully urge that this Court use its power to reprimand these Pennsylvania State Courts for their rule by tyranny, instead of law; and thus protect the Constitution of the United States.

Respecfully submitted,

EDITH NYCUM, *Petitioner*
1210-13th Avenue,
Altoona, Pennsylvania

CERTIFICATE OF PETITIONER

Hereby certify that she means no disrespect to this Court nor any member thereof. She is sincere in the belief that a serious and grave error has been committed, and she further certifies that in her opinion this second petition for rehearing is filed, not for delay but that Justice may be done.

EDITH NYCUM, *Petitioner.*

SUPPLEMENTAL DECREE

Now, July 31, 1944, Messers. Wagner and Safier, of Pittsburgh present counsel for Edith Nycum, referring to the record in the above stated case, stated that it did not show the disposition of the rule granted upon the petition of the above named defendant for allowance of an appeal from the sentence of the committing magistrate in the City of Altoona. Upon receiving this information the Court advised counsel that at the time of the hearing on the rule, during the preliminary discussion, before any testimony was heard, it was agreed that the rule be made absolute. All the parties, including the defendant personally and her counsel, Frank B. Warfel, Esq., who, as defendant's attorney, filed the petition for the rule, together with defendant's witness, and Samuel H. Jubelirer, City Solicitor, together with city witnesses, were present in court. And there being no request by any of the parties for the taking of testimony, the hearing was proceeded with informally, and the several witnesses for the City of Altoona, and the defendant personally, as well as her witnesses, all testified. Counsel then argued the case, and Mr. Warfel, representing the defendant, openly admitted that she was guilty of violating the ordinance relative to erecting signs without a permit. It further appearing that the defendant paid fines totaling Seventy-five ($75.00) Dollars, under protest, on the first prosecution, and the offense being a continuous one, a new prosecution was instituted. Before hearing on the second prosecution appeal was filed in the first case in which the fines had been paid. Pending the rule for appeal defendant had posted cash bail in the sum of Two Hundred ($200.00) Dollars, (which said cash bail was returned to the defendant by the City of Altoona January 24, 1944). After hearing the testimony and the arguments, to wit: January 21, 1944, the Court then being of the opinion that for the good of all parties concerned, the case ought to be settled and disposed of, directed the entry of a decree and orally stated the substance of the content thereof. The said decree is now a part of the record. Counsel for defendant, Messers. Wagner and Safier, Esq.s, have also called the Court's attention to the statement of the defendant that she was not the tenant in the building upon which the advertisements complained of were placed. The defendant did not raise this question in the petition. Neither did she nor her counsel in the hearing, raise the question, and it was not mentioned until after all the hearing of testimony, the argument of counsel, and the Court's oral statement

of the contents of the decree. Mr. Warfel, defendant's counsel whom she had employed to prepare her petition for appeal and try the case in the Court of Quarter Sessions, did not join in that statement.

By the Court,

GEORGE G. PATTERSON, P. J.

Filed August 5, 1944.
John B. Elliott, Pro.

From the record certified this
18th day of September, A.D. 1944

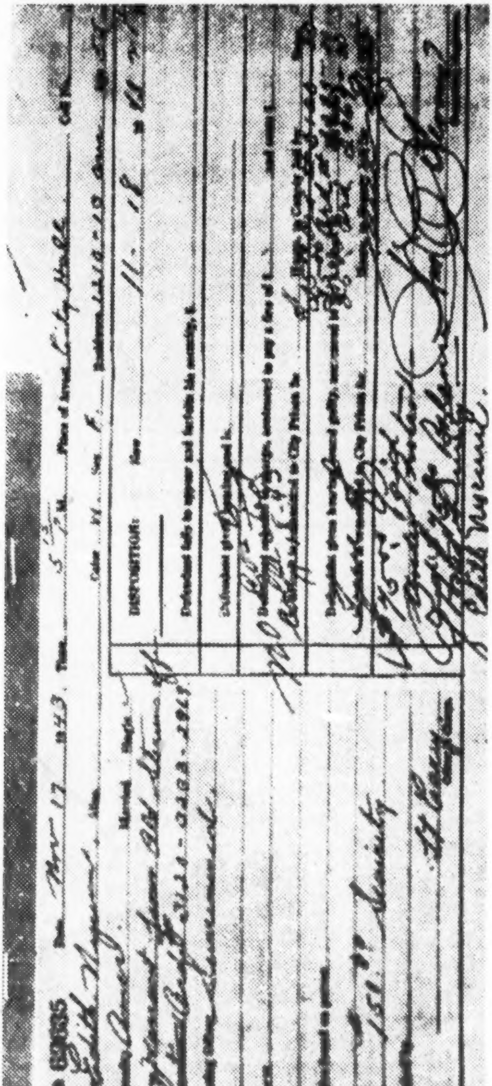
JOHN B. ELLIOTT,
Prothonotary and Clerk.

COMMONWEALTH OF PENNSYLVANIA |
COUNTY OF BLAIR, | SS:
CITY OF ALTOONA |

I, H. ATLEE BRUMBAUGH, Mayor of the City of Altoona, located in the County of Blair and the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a full, true and correct photostatic copy of the whole record of the case therein stated to No. D 62635, before the same was appealed by Edith Nycum, the defendant therein named, to the Court of Quarter Sessions at Hollidaysburg, Blair County, Pennsylvania, in which appeal the Court directed that the fines imposed by the committing magistrate should be reduced to Ten ($10.00) Dollars and that in compliance with said decree the sum of Sixty-five ($65.00) Dollars was repaid to the defendant, Edith Nycum.

IN TESTIMONY WHEREOF I have hereto set my hand and affixed the seal as Mayor of the City of Altoona, this 14th day of May A. D. 1945.

H. Atlee Brumbaugh
Mayor of the City of Altoona

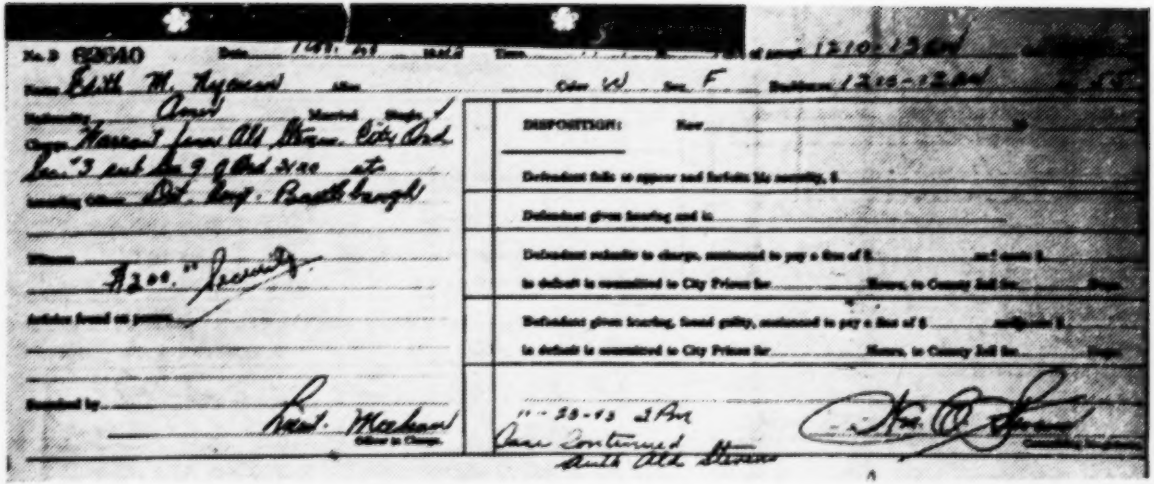


COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF BLAIR, : SS:
:
CITY OF ALTOONA :

I, H. ATLEE BRUMBAUGH, Mayor of the City of Altoona, located in the County of Blair and the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a full, true and correct photostatic copy of the whole record of the case therein stated to No. D 62640, before the $200.00 security was paid back to Mrs. M. A. Phillips on the 24th day of January 1944, who had furnished said security

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal as Mayor of the City of Altoona, this 14th day of May A. D. 1945.

H. Atlee Brumbaugh
Mayor of the City of Altoona



No. 9 62640 Date 7/21 '21 Ward Time ... of arrest 12:02 12 PM

Name Edith M. Hammond Alias ... Color W Sex F Residence 1210-12 Pine

Nationality American Married ... Single ✓

Charge Warrant issued Aldermanic City Ord. Sec. 3 sub Sec 9 Ord 2400 etc

Arresting Officer Det. Sergt. Boatbrough

Witness A200. " Jessup

Articles found on person ...

Received by ... Chief Markham Officer in Charge

DISPOSITION: Date ... 19

Defendant fails to appear and forfeits his security, $ ...

Defendant given hearing and is ...

Defendant ordered to charge, sentenced to pay a fine of $ ... and costs $ ... in default is committed to City Prison for ... Hours, to County Jail for ... Days.

Defendant given hearing, found guilty, sentenced to pay a fine of $ ... and costs $ ... in default is committed to City Prison for ... Hours, to County Jail for ... Days.

11-29-21 3 PM Case Continued until Edith Alda Stevens

Edith M. Hammond Committing Magistrate